Supreme Court, U.S.
FILED

99 602 OCT 7 1999

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

GLEN TAYLOR, Executor of the
Estate of VERA TAYLOR,

Petitioner,

versus

PAUL B. HALL REGIONAL MEDICAL CENTER, d/b/a
Paintsville Hospital Co. and
HEALTH MANAGEMENT ASSOCIATES, INC.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

PETITION FOR WRIT OF CERTIORARI

JOSEPH H. MATTINGLY III
Counsel of Record for Petitioner
104 West Main Street
P.O. Box 678
Lebanon, Kentucky 40033
(270) 692-1718

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether a claim of inappropriate medical screening under the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §1395dd(a), requires an allegation of improper motive on the part of the offending hospital to state a claim for recovery?

2. Whether claims of inappropriate screening, failure to provide stabilizing treatment and transfer before stabilization has been accomplished under the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §§1395dd(a), (b) and (c), respectively, require an allegation of more than a negligent violation on the part of the offending hospital to state a claim for recovery?

LIST OF PARTIES

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Sixth Circuit.

TABLE OF CONTENTS

Page

Questions Presented i

List of Parties ii

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Statute Involved 2

Statement of the Case 2

Reasons for Granting the Writ 5

A. Certiorari Should Be Granted To Resolve a Conflict Among the Circuit Courts of Appeal in the Interpretation of a Federal Statute, 42 U.S.C. §1395dd(a) 5

B. Certiorari Should Be Granted to Resolve a Conflict in the Interpretation of the Requirements of Sections (b) and (c) of EMTALA Between the Circuit Courts of Appeal and this Court's Recent Directive that EMTALA Should Not Be Read to Include Qualifications Not Imposed by its Plain Language 8

Conclusion 12

Appendix A1

TABLE OF AUTHORITIES

Page

CASES:

Burditt v. U.S. Dept. of Health and Human Services, 934 F.2d 1362 (5th Cir. 1991) 6

Cherukuri v. Shalala, 175 F.3d 446 (6th Cir. 1999) 9

City of Chicago v. Environmental Defense Fund, 511 U.S. 328 (1994) 11

Cleland v. Bronson Health Care Group, Inc., 917 F.2d 266 (6th Cir. 1990) 6, 8

Correa v. Hospital San Franciso, 69 F.3d 1184 (1st Cir. 1995), *cert. denied*, 517 U.S. 1136 (1996) 6

Gatewood v. Washington Health Care Corp., 933 F.2d 1037 (D.C. Cir. 1991) 6

Hardy v. New York City Health & Hosps. Corp., 164 F.3d 789 (2nd Cir. 1999) 8

Keene Corp. v. United States, 508 U.S. 200 (1993) 11

Marshall v. East Carroll Parrish Hosp. Serv. Dist., 134 F.3d 319 (5th Cir. 1998) 8

Morgan v. Church's Fried Chicken, 829 F.2d 10 (6th Cir. 1987) 3

Power v. Arlington Hosp. Ass'n, 42 F.3d 851 (4th Cir. 1994) 6

Roberts v. Galen of Virginia, Inc., 525 U.S. 249 (1999) 4, 5, 9, 11

Roberts v. Galen of Virginia, Inc., 111 F.3d 405 (6th Cir. 1997) 6

Summers v. Baptist Med. Ctr. Arkadelphia, 91 F.3d 1132 (8th Cir. 1996) 6, 8

TABLE OF AUTHORITIES – Continued

Page

STATUTES AND RULES:

28 U.S.C. §1254(1) 1

42 U.S.C. §1395dd ..... *passim*

42 U.S.C. §1395dd(a) 4, 5, 6, 7

42 U.S.C. §1395dd(b) 4, 8, 9

42 U.S.C. §1395dd(c) 4, 8, 9

42 U.S.C. §1395dd(d) 10

42 U.S.C. §1395dd(e)(3)(A) 9

42 U.S.C. §1395dd(e)(3)(B) 9

F.R.Civ.P. 12(b)(6) 1, 3, 4

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Glen Taylor, as Executor of the Estate of Vera Taylor, respectfully prays that a Writ of Certiorari issue to review the opinion and order of the United States Court of Appeals for the Sixth Circuit, entered on July 15, 1999.

OPINIONS BELOW

Neither the opinion of the United States Court of Appeals for the Sixth Circuit, whose judgment is herein sought to be reviewed, nor the opinion of the United States District Court for the Eastern District of Kentucky in this case was recommended for full-text publication but both are reprinted in the appendix hereto, at pp. A1-A7 and A9-A23, respectively.

JURISDICTION

An order of the United States Court of Appeals for the Sixth Circuit was entered on July 15, 1999, affirming the order of the United States District Court for the Eastern District of Kentucky which granted the Respondents' motion to dismiss for failure to state a claim upon which relief could be granted pursuant to F.R.Civ.P. 12(b)(6). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTE INVOLVED

The statute involved in this case is the "Emergency Medical Treatment and Active Labor Act," 42 U.S.C. §1395dd, reprinted in the appendix hereto, at pp. A33-A42.

STATEMENT OF THE CASE

This action was filed in the United States District Court for the Eastern District of Kentucky on August 22, 1997, alleging, *inter alia*, that the Respondents, Paul B. Hall Regional Medical Center, d/b/a Paintsville Hospital Company, and its parent corporation, Health Management Associates, Inc. (hereinafter jointly referred to as the "Hospital"), had violated 42 U.S.C. §1395dd, the "Emergency Medical Treatment and Active Labor Act" (hereinafter "EMTALA").

On August 22, 1995, the decedent, Vera Taylor, was delivered to the Hospital's emergency room. After waiting approximately twelve hours, Mrs. Taylor was examined by an emergency room physician who misdiagnosed her condition as pneumonia. Mrs. Taylor was then admitted to the Hospital. Rather than pneumonia, Mrs. Taylor was actually suffering the onset of congestive heart failure. While hospitalized, she was not provided treatment for congestive heart failure and as a result suffered a stroke on August 24, 1995. After Hospital personnel discovered that Mrs. Taylor had suffered a stroke and informed her admitting physician, the physician ordered Mrs. Taylor's transfer to another facility. Despite the physician's order, the Hospital did not arrange transfer until

hours later. Upon subsequent arrival at the receiving facility, Mrs. Taylor was found to be "brain dead" on her left side. As a direct result of the Hospital's actions, including its "improper treatment, abuse, mismanagement and misdiagnosis," Vera Taylor died on August 29, 1995.[1]

The decedent's son, Glen Taylor, the Petitioner herein, was appointed Executor of her estate and subsequently filed this action.[2] The Hospital was served with summons and a copy of Petitioner's verified Complaint on September 24, 1997. The Hospital responded to the Petitioner's EMTALA claim by filing, in lieu of an Answer, a motion to dismiss under F.R.Civ.P. 12(b)(6). No opportunity for discovery was afforded. The district court sustained the Hospital's motion, holding that the Petitioner's pleading was insufficient because it "failed to set forth any improper motive on the part of the Defendants in both his Complaint and in his Response. Instead, he merely stressed that the Paintsville Hospital did not properly screen, stabilize and transfer his mother." (A19).

On appeal, the Petitioner argued that every other Circuit Court of Appeals in the country which had considered the issue had expressly rejected the notion that

---

[1] These are the factual allegations of the Complaint and were required to be taken as true and construed in a light most favorable to the claimant on the Hospital's motion to dismiss under F.R.Civ.P. 12(b)(6). *Morgan v. Church's Fried Chicken*, 829 F.2d 10 (6th Cir. 1987). The Complaint is reproduced in the appendix hereto at pp. A24-A32.

[2] Counsel representing the Petitioner herein did not draft the Complaint and did not represent the Petitioner in the courts below.

allegation and proof of improper motive was required to state a claim under EMTALA. After oral argument before the Circuit Court of Appeals, the United States Supreme Court issued its *per curiam* opinion in *Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249 (1999), which held that section (b) of EMTALA "does not require an 'appropriate' stabilization nor can it reasonably be read to require an improper motive." *Id.* at 250. Although expressly declining to express an opinion as to whether proof of an improper motive is required under section (a) of EMTALA, this Court noted that the interpretation of the United States Court of Appeals for the Sixth Circuit that proof of improper motive was required under that section of EMTALA was in conflict with the law of other circuits which do not read section (a) as imposing an improper motive requirement.

The Circuit Court of Appeals affirmed the district court's F.R.Civ.P. 12(b)(6) dismissal of Petitioner's claim. It insisted that its requirement of an allegation of an improper motive to state a violation of the appropriate medical screening requirements of EMTALA's section (a) had not been disturbed by this Court's decision in *Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249 (1999). The Court of Appeals reasoned therefore that because Petitioner had failed to allege improper motive in his Complaint he had failed to state a cause of action under section (a) of EMTALA. The Court of Appeals further held that because Petitioner's claims that the Hospital had violated sections (b) and (c) of EMTALA, requiring the provision of stabilizing treatment and restricting the transfer of unstabilized patients, "sounded" only in negligence, his

Complaint had failed to state a cause of action under those sections of EMTALA.

REASONS FOR GRANTING THE WRIT

A. Certiorari Should Be Granted To Resolve a Conflict Among the Circuit Courts of Appeal in the Interpretation of a Federal Statute, 42 U.S.C. §1395dd(a).

The first issue in this case is whether an action against a hospital for inappropriate screening under section (a) of EMTALA requires an allegation of improper motive on the part of the hospital, its staff or physicians to state a claim for recovery. The issue is a substantial one to every potential claimant under EMTALA. In fact, if a claimant must allege and prove the inner thoughts and prejudices of attending hospital personnel in order to state a claim and recover under EMTALA, the successful pursuit of a civil EMTALA claim for inappropriate screening is virtually impossible.

If certiorari were granted, this Court could further develop its interpretation of EMTALA in *Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249 (1999), to define the prerequisites to recovery thereunder. The Court could then provide direction to the lower courts in an area where there has developed a clear split in interpretation of EMTALA.

The Circuit Courts of Appeal have labored to define exactly what a claimant must allege to successfully state a claim that a hospital has violated the "appropriate medical screening" requirement of EMTALA. The Court of Appeals for the Sixth Circuit felt compelled to limit the

scope of EMTALA's appropriate medical screening dictate by requiring that a claimant allege improper motive in order to state a claim. *Roberts v. Galen of Virginia, Inc.*, 111 F.3d 405 (6th Cir. 1997) (*rev'd*, 525 U.S. 249 (1999)); *Cleland v. Bronson Health Care Group, Inc.*, 917 F.2d 266 (6th Cir. 1990). However, the Sixth Circuit's interpretation makes proving a civil EMTALA claim under section (a) virtually impossible.

In fact, the Courts of Appeal for the District of Columbia Circuit, the First Circuit, the Fifth Circuit and the Eighth Circuit agree that allegation and proof of an improper motive are not prerequisites under section (a) of EMTALA. *Gatewood v. Washington Health Care Corp.*, 933 F.2d 1037 (D.C. Cir. 1991); *Correa v. Hospital San Francisco*, 69 F.3d 1184 (1st Cir. 1995); *Burditt v. U.S. Dept. of Health and Human Services*, 934 F.2d 1362 (5th Cir. 1991); *Summers v. Baptist Med. Ctr. Arkadelphia*, 91 F.3d 1132 (8th Cir. 1996). Rather than adopting the limitation espoused by the Sixth Circuit, each of the other Circuit Courts of Appeal determined that in order to state a claim under EMTALA, a claimant must allege that she was not treated as other similarly situated patients are treated.

Creating even further disparity among the Circuit Courts of Appeal's interpretation of section (a) of EMTALA, the Fourth Circuit, while also rejecting the Sixth Circuit's improper motive requirement, adopted a "burden-shifting" approach in *Power v. Arlington Hosp. Ass'n*, 42 F.3d 851 (4th Cir. 1994). In *Power*, the Fourth Circuit concluded that EMTALA only required that a plaintiff allege and prove a prima facia case (not including a showing of improper motive) – essentially a threshold showing of disparate treatment. Then, according to

the Fourth Circuit, the burden shifts to the hospital to prove that it did not have an improper motive for its alleged violation of EMTALA.

The significance to a claimant of a uniform interpretation of the prerequisites to recovery under section (a) of EMTALA could not be more clearly evident than with the facts of the case at bar. The Petitioner alleged that the Hospital failed to provide the required screening examination for twelve hours after his mother's arrival at the emergency room. He further alleged that the Hospital's screening examination, when ultimately performed, failed to detect his mother's condition. The Petitioner was not given an opportunity to present proof as to how the delay in administering a screening examination or the misdiagnosis by the emergency room physician violated EMTALA because both the district court and the Sixth Circuit held that no matter how egregious the Hospital's conduct, without an allegation of improper motive, a claim under section (a) of EMTALA must fail.

The prerequisites for recovery under EMTALA should be uniform throughout the United States. Claimants in the Sixth Circuit should not be required to allege and prove more, and cannot expect that they can allege and prove less, than claimants in other areas of the country. Potential claimants in circuits which have not directly addressed the issue should not be left to guess whether their circuit will adopt the interpretation of the Sixth Circuit, the interpretation of other circuits or some wholly different interpretation of section (a) of EMTALA.

This clear divergence in the interpretation of this important federal statute among the courts of appeal is a compelling reason for this Court to issue a Writ of Certiorari in this case.

B. Certiorari Should Be Granted to Resolve a Conflict in the Interpretation of the Requirements of Sections (b) and (c) of EMTALA Between the Circuit Courts of Appeal and this Court's Recent Directive that EMTALA Should Not Be Read to Include Qualifications Not Imposed by its Plain Language.

The district court's dismissal of the Petitioner's claims that the Hospital had violated sections (b) and (c) of EMTALA was affirmed by the Sixth Circuit because those claims, as pled, "sounded" in negligence. The Sixth Circuit held that EMTALA provides no cause of action for the mere negligent violation thereof. In other words, the Sixth Circuit's interpretation requires an allegation of something worse than a negligent violation of EMTALA to state a claim thereunder.

The Sixth Circuit pointed out that several other Circuits have taken the position that EMTALA is not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence. *Cleland v. Bronson Health Care Group, Inc.*, 917 F.2d 266 (6th Cir. 1990); *Hardy v. New York City Health & Hosps. Corp.*, 164 F.3d 789 (2nd Cir. 1999); *Marshall v. East Carroll Parish Hosp. Serv. Dist.*, 134 F.3d 319 (5th Cir. 1998); *Summers v. Baptist Med. Ctr. Arkadelphia*, 91 F.3d 1132 (8th Cir. 1996). However, even if EMTALA was not intended to supplant state tort law, the notion that a negligent violation of EMTALA is not actionable is in conflict with this

Court's recent directive in *Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249 (1999), that lower courts should not read EMTALA to include qualifications not imposed by its plain language.[3]

A plain reading of EMTALA reveals that a violation occurs if certain specific conditions are satisfied. For example, section (b) requires first that an individual "come to a hospital." Second, the hospital must determine that the individual has "an emergency medical condition." Third, the hospital must have failed to provide "for such further medical examination and such treatment as may be required to stabilize the medical condition." Fourth, such further examination and treatment must be "within the staff and facilities available at the hospital." If a claimant can prove these conditions, she has established that a hospital has violated the obligations imposed by the plain language of EMTALA. None of the statutory conditions can be reasonably read to impose any additional condition. Therefore, if the specific conditions for violation outlined in the statute are satisfied, even if they are the result of negligent conduct, the violation is actionable.

Furthermore, the definitions of the key terms of EMTALA in sections (b) and (c) specify the nature of a violation and the mental state of the party that commits a violation. The definitions of "stabilize" and "emergency medical condition" set out in 42 U.S.C. §1395dd(e)(3)(A), (B) both incorporate a "reasonableness" standard. These

---

[3] A separate panel of the Sixth Circuit acknowledged this directive in *Cherukuri v. Shalala*, 175 F.3d 446, 450 (6th Cir. 1999).

definitions, while reinforcing the conclusion that hospitals need not *guarantee* that patients who come to emergency rooms will be correctly diagnosed and their emergency medical condition successfully treated, also make it clear that hospitals must at least stabilize the condition of those patients who could reasonably be expected to be placed in jeopardy without such treatment. Certainly the use of the familiar "reasonableness" standard cannot be read to suggest that the hospital will be liable only if its conduct is more egregious than mere negligence.

This interpretation is buttressed by the absence of a fault requirement in the civil enforcement subsection of 42 U.S.C. §1395dd(d). Subparagraph (1) provides for civil monetary penalties imposed by the Secretary of Health and Human Services ("Secretary") against hospitals and doctors who *negligently* violate EMTALA. Subparagraph (2) of §1395dd(d) allows civil enforcement of EMTALA to any "individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section. . . . " Conspicuously absent from the civil enforcement provisions of the statute is any requirement that a harmed individual prove that a hospital's violation was the result of more than mere negligence. The omission of a fault requirement in the private right of action provision when its neighboring subsection contains such a requirement is a clear indication that the omission was intentional and suggests that a harmed individual can prevail on a lesser showing than would be required of the Secretary in imposing a civil penalty. "It is generally presumed that Congress acts intentionally and purposefully" when it "includes particular language in

one section of a statute but omits it in another." *City of Chicago v. Environmental Defense Fund*, 511 U.S. 328, 338 (1994) (citing *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993)). Clearly, the express requirement of negligent conduct for civil penalties and the lack of such an express requirement for civil enforcement does not support a conclusion that a private claimant must make a greater showing than the Secretary. It makes little sense to believe that Congress intended that the Secretary could terminate a hospital from the entire Medicare program for its negligent failure to fulfill its obligation to comply with EMTALA while requiring civil claimants seeking only money damages from those hospitals to prove more.

As a result of the efforts of various Courts of Appeal to limit the scope of EMTALA, each has ignored the plain reading of the statute, contrary to this Court's admonition that in determining the requirements of EMTALA, courts should consider the text of the statute and a reasonable reading thereof. *Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249 (1999). This disparity between the admonition of this Court and the interpretations of the lower courts is a compelling reason for this Court to issue a Writ of Certiorari in this case.

CONCLUSION

For the foregoing reasons, this Petition for Certiorari should be granted to consider those issues identified herein.

October 6, 1999

Respectfully submitted on
October 6, 1999

JOSEPH H. MATTINGLY III
Counsel of Record
for the Petitioner

JOSEPH H. MATTINGLY III, P.S.C.
104 West Main Street
P.O. Box 678
Lebanon, Kentucky 40033
(270) 692-1718

APPENDIX

No. 98-5052

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ESTATE OF VERA TAYLOR,
GLEN TAYLOR, Executor,
Plaintiffs-Appellants,

v.

PAUL B. HALL REGIONAL MEDICAL CENTER, doing business as the Paintsville Hospital Company and HEALTH MANAGEMENT ASSOCIATES, INC.,
Defendants-Appellees.

Decided and Filed July 15, 1999

Before: JONES and COLE, Circuit Judges; and DLOTT,* District Judge.

PER CURIAM. This appeal arises under the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd. EMTALA requires emergency patients, treated in a hospital setting, to be screened and stabilized prior to their release.[1] When stabilization has not yet

---

* Hon. Susan J. Dlott, United States District Judge for the Southern District of Ohio, sitting by designation.

[1] As we explained in *Fingers v. Jackson-Madison County* Gen. Hosp. Dist., No. 95-5903, 1996 WL 678233, at *2 n. 1 (6th Cir. Nov. 21, 1996) (per curiam), "[t]he hospitals covered by EMTALA are those with the emergency departments that execute Medicare provider agreements with the federal government. . . ."

occurred, EMTALA restricts the transfer of such patients to other health care facilities. *See* 42 U.S.C. §§ 1395dd(a) (screening requirement), (b) (stabilization requirement), (c) (transfer restriction). Such requirements and restrictions prevent "patient dumping," whereby the poor and uninsured are released from emergency rooms without first receiving proper medical care. *See Cleland v. Bronson Health Care Group, Inc.*, 917 F. 2d 266, 268 (6th Cir. 1990).

Appellant, Glen Taylor ("Taylor"), is the executor of the estate of Vera Taylor, his mother. The two appellees – which appeared as co-defendants in the district court – are the Paul B. Hall Regional Medical Center ("Medical Center"), where Vera Taylor was afforded medical care, and Health Management Associates, Inc. ("HMA"), the Medical Center's parent company. Taylor now appeals the Fed. R. Civ. P. 12(b)(6) dismissal of his EMTALA claim.[2] For the reasons that follow, we affirm.

I

The following facts are gleaned from Taylor's sparsely worded complaint: On August 22, 1995, Vera Taylor-aged 81, and complaining of shortness of breath-was seen in the Medical Center's emergency room, then

---

[2] In his seven-count complaint, Taylor also sought relief for constitutional injuries under 42 U.S.C. § 1983. The district court's ruling, granting the motion to dismiss in its entirety, applied to Taylor's constitutional claims as well. See J.A. at 13-27. That aspect of the ruling was not appealed. Accordingly, the only issue before us is whether the district court erred in dismissing Taylor's EMTALA claim.

admitted for hospital care. She was treated in the Medical Center for two days, until August 24, 1995. During that course of treatment, she was misdiagnosed as having pneumonia, when she actually had congestive heart failure. On August 24th, she suffered a stroke, a condition which Medical Center staff failed to timely diagnose or treat. In the early morning hours of August 25th, she was transferred to the King's Daughters Hospital in Ashland, Kentucky, in order to be examined by a neurologist. A CT scan, taken shortly thereafter, revealed her to be "brain dead" on the left side. She died four days later, on August 29, 1995.

II

We review Rule 12 (b) (6) dismissals *de novo*, using the same standard applied by the district court. *Taxpayers United for Assessment Cuts v. Austin*, 994 F. 2d 291, 296 (6th Cir. 1993). In ruling on such a motion, the factual allegations in the complaint must be taken as true, and construed in a light most favorable to the non-moving plaintiff. *Morgan v. Church's Fried Chicken*, 829 F. 2d 10, 12 (6th Cir. 1987). Denial of the motion is proper "unless it can be established beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Achterhof v. Selvaggio*, 886 F. 2d 826, 831 (6th Cir. 1989). *See also Broyde v. Gotham Tower, Inc.* 13 F. 3d 994, 996 (6th Cir. 1994); *Forest v. United States Postal Serv.*, 97 F.3d 137, 139 (6th Cir. 1996).

III

The district court dismissed Taylor's EMTALA claim because it found the claim improperly pled.[3] Having reviewed the matter *de novo*, we agree. In his complaint, Taylor pled his EMTALA claim as follows:

1. [ ]Plaintiff reiterates and realleges all allegations previously made [;]

2. [D]efendant is governed under the regulations and guidelines of [EMTALA;]

3. [ ]Defendant violated the provisions of this [A]ct[;]

4. [D]ue to the [d]efendant's violation of [the Act], the [p]laintiff suffered harm[;] and

---

[3] The district court found in the alternative that, even if Taylor had properly pled his complaint, his EMTALA claim would still fail, for the record demonstrates that neither the Medical Center nor HMA improperly screened, stabilized or transferred Vera Taylor. J.A. at 24-26. To reach that alternate conclusion, the court relied upon hospital documents, i.e., matters outside the pleadings. *See, e.g., id.* at 25 (referencing Vera Taylor's hospital discharge summary). To that limited extent, the district court was construing defendants' motion not as one for dismissal under Rule 12(b)(6), but instead, as one for summary judgment under Fed. R. Civ. P. 56. Such a review is proper, and authorized by Rule 12(b).

Even when so construed, and reviewed *de novo*, the district court's judgment should be affirmed. This is because no genuine dispute exists as to the material facts cited by the district court, and those facts demonstrate that the Medical Center and HMA are both entitled to judgment under EMTALA as a matter of law. Fed. R. Civ. P. 56(c). *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

5. [U]nder the [A]ct, [p]laintiff is able to recover damages. . . .

J.A. at 11.

This language is insufficient to satisfy Fed. R. Civ. P. 8(a), which requires every complaint to include not only "a short and plain statement of the claim showing that the pleader seeks." Fed. R. Civ. P. 8(a)(2), (a)(3). To satisfy those notice pleading requirements, a complaint must contain "more **than bare assertions of legal conclusions." Scheid v. Fanny Farmer Candy Shops, Inc., 859 F. 2d 434, 436** (6th Cir. 1988). Thus, "either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory" must be pled. *See Id.* (emphasis deleted). To that end, "when a complaint omits facts that, if they existed, would clearly dominate the case, it seems fair to assume that those facts do not exist." *Id.* at 437. In such circumstances, dismissal under Fed. R. Civ. P. 12(b)(6) is appropriate. *Id.*

Construing the complaint, pursuant to *Morgan*, in the light most favorable to Taylor, there is no question that he fails to plead "all the material elements" of his EMTALA claim. As a preliminary matter, Taylor references the term "defendant," but fails to specify from which defendant he seeks relief-the Medical Center, or HMA. Taylor also fails to allege how that defendant supposedly violated EMTALA, by failing to properly screen, stabilize, or transfer his mother. In other words, Taylor fails to state whether his EMTALA claim arises under §§ 1395dd(a), (b), or (c). To that end, he also fails to reference the differing burdens of proof applicable to such claims. As the Supreme Court recently clarified, § 1395dd(b) claims

– alleging a failure to stabilize an emergency patient – do not require an EMTALA plaintiff to prove that the defendant acted with an improper motive. *Roberts v. Galen of Virginia, Inc.*, ___ U.S. ___, 119 S.Ct. 685, 687 (1999) (*per curiam*). Section 1395dd(a) claims, on the other hand – concerning the screening of emergency patients – carry with them the burden to demonstrate an improper motive on the part of defendant.[4] *Id.* at 686-87 (citing *Cleland*, 917 F.2d at 272). Assuming, *arguendo*, that Taylor seeks to challenge, under § 1395dd(a), whether defendant(s) properly screened his mother's medical condition upon her hospital admittance, that claim fails on pleading grounds, as there is no allegation in the complaint that either defendant acted with an improper motive. *See supra.* Finally, Taylor's complaint fails for the additional reason that his EMTALA claim, as pled, sounds in negligence, *i.e.*, as a medical malpractice cause of action. As the district court correctly noted, an EMTALA claim is "not a substitute for [a] state law [medical] malpractice action[ ], and [EMTALA] was not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence." J.A. at 26. *Accord Hardy v. New York City Health and Hosps. Corp.*, 164 F.3d 789, 792 (2d Cir. 1999); *Marshall v. East Carroll Parish Hosp. Serv. Dist.*, 134

---

[4] Examples of improper motive include, but are not limited to, indigency, lack of insurance, dislike of the patient's condition, or bias against the patient because of his/her race, sex, politics, occupation, or education. *Roberts v. Galen of Virginia., Inc.*, 111 F.3d 405, 409 (6th Cir. 1997), *rev'd on other grounds*, ___ U.S. ___, 119 S.Ct. 685 (1999) (*per curiam*); *Cleland*, 917 F.2d at 272.

F.3d 319, 322 (5th Cir. 1998); *Summers v. Baptist Med. Ctr. Arkadelphia*, 91 F.3d 1132, 1137 (8th Cir. 1996).

IV

The district court's dismissal of Taylor's EMTALA claim is therefore **AFFIRMED.**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

PIKEVILLE

CIVIL ACTION NO. 97-332

ESTATE OF VERA TAYLOR, and
GLEN TAYLOR, Executor, PLAINTIFF
V. JUDGMENT

PAUL B. HALL REGIONAL MEDICAL CENTER, d/b/a Paintsville Hospital Co., and HEALTH MANAGEMENT ASSOCIATES, INC.

DEFENDANTS

* * * * * * * * * *

In conformity with the Memorandum Opinion and Order of even date,

IT IS ORDERED that this matter be, and the same hereby is, **DISMISSED WITH PREJUDICE** and **STRICKEN FROM THE COURT'S ACTIVE DOCKET**. The defendants are awarded costs pursuant to Fed R. Civ. P. 54(d). This is a final and appealable Order, and there is no just cause for delay.

This the 31st day of December, 1997.

/S/ JOSEPH M. HOOD
JOSEPH M. HOOD, JUDGE

Date of Entry and Services: 1-5-98

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 97-332

ESTATE OF VERA TAYLOR, and
GLEN TAYLOR, Executor, PLAINTIFF

V. *MEMORANDUM OPINION AND ORDER*

PAUL B. HALL REGIONAL MEDICAL
CENTER, d/b/a Paintsville Hospital Co.,
and HEALTH MANAGEMENT
ASSOCIATES, INC. DEFENDANTS

* * * * * * * * *

The defendants, Paul B. Hall Regional Medical Center, d/b/a, Paintsville Hospital Co. ("Paintsville Hospital"), and Health Management Associates, Inc. ("Health Management"), have moved the Court [Record No.4] to dismiss this action. The plaintiff has responded, to which the defendants have replied.

Being fully briefed, this matter is ripe for decision. Having reviewed the record and the parties' memoranda, the Court finds that this matter should be dismissed as against the defendants. Accordingly, the Court makes the following findings of fact and conclusions of law consistent with such a determination.

FINDINGS OF FACT

The Plaintiff, Glen Taylor ("Taylor"), brings this action as executor of his mother's estate. His mother, Vera Taylor ("Ms. Taylor"), was taken to Paintsville Hospital

on August 22, 1995, complaining of shortness of breath. Ms. Taylor was an 81-year old woman.

Ms. Taylor was admitted to Paintsville Hospital by the emergency room doctor, Dr. Aranas. She remained at Paintsville Hospital, receiving treatment, until August 24, 1995. She was subsequently transferred to King's Daughters Hospital on August 25, 1995, where she eventually died on August 29, 1995.

Taylor now brings this action against the defendants, Paintsville Hospital, his mother's treating hospital, and Health Management, the parent company to Paintsville Hospital, claiming that the defendants treated his mother, Ms. Taylor, wrongfully. Specifically, Taylor sets forth the following claims against the defendants: (1) The defendants deprived Ms. Taylor of her right to life under the United States Constitution by improper treatment, abuse, mismanagement and misdiagnoses; (2) The defendants denied Ms. Taylor her right to liberty and adequate medical treatment in violation of the United States Constitution by performing several arterial blood gas tests on her when she did not want such tests; (3) The defendants violated Ms. Taylor's right to liberty and adequate treatment under the Fourteenth Amendment by not being informed of her right to refuse or accept certain medical treatment; (4) The defendants deprived Ms. Taylor of her right to liberty, safety, and freedom of movement in violation of the United States Constitution by intentionally not providing for her ambulance transportation; (5) The defendants deprived Ms. Taylor of her right to adequate medical care and treatment in violation of the United States Constitution by failing to provide her with the benefits and protection of hospital policies and protocols;

(6) The defendants discriminated against Ms. Taylor due to her age by being subjected to several invasive procedures against her will; and (7) The defendants violated the Emergency Medical Treatment and Active Labor Act ("EMTALA"). Thus, based on the above allegations, Taylor is "seeking damages against Defendants for committing acts under color of state law which deprived the Plaintiff, Vera Taylor, of rights secured under the Constitution and the laws of the United States." Plaintiff's Complaint at p. 1. Hence, Taylor brings this action against the defendants pursuant to 42 U.S.C. § 1983.

The defendants have now moved the Court to dismiss this action on several grounds. Mainly, the defendants submit that they are not state actors and therefore could not have violated Ms. Taylor's constitutional rights. Moreover, they argue, even if they could be deemed state actors, the complaint still should be dismissed because the complaint was not filed within the appropriate statute of limitations time. Additionally, Taylor has failed to set forth any discriminatory treatment and/or improper motivation on the part of the defendants; hence, Taylor's EMTALA claim should be dismissed. Lastly, Taylor's state law claims should either be dismissed because they are barred by the applicable statute of limitations or remanded for the state court to decide.

Taylor responds, arguing that the defendants are state actors due to their participation in the Hill-Burton Act, i.e. the Hospital Survey and Construction Act. Taylor further argues that his claims are not subject to the one-year statute of limitations because Taylor has asserted that his mother was denied her right to equal protection, and such claim does not fall within the one-year statute

of limitations. Lastly, Taylor contends that a plaintiff need only meet one of three prongs to put forth an EMTALA claim, and he has established at least one of those prongs.

CONCLUSIONS OF LAW

(1) THE DEFENDANTS ARE NOT STATE ACTORS

In order for the defendants to be held liable for depriving Ms. Taylor of her constitutional rights, the defendants have to be state actors. A private entity can be deemed a state actor when that entity engages in conduct " 'fairly attributable to the state'." *Wolotsky v. Huhn*, 960 F.2d 1331, 1335 (6th Cir. 1992) (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982)). To determine whether the entity is engaging in conduct " 'fairly attributable to the state' ", *Id.*, or in other words, "state action", three tests have been devised. "The three tests are: (1) the public function test; (2) the state compulsion test; and (3) the symbiotic relationship or nexus test." *Id.* (citations omitted).

Under the public function test, a private entity is considered a state actor if the conduct it engages in is conduct that is "traditionally exclusively reserved to the state, such as holding elections, or eminent domain." *Id.* (citations omitted). In the case at hand, the defendants conduct of treating patients is not conduct which is typically reserved for the state. Thus, this case does not fall under the public function test.

Under the state compulsion test, the private entity is deemed a state actor because the state is either overtly or

covertly, directing or exercising control over the private entity. *Id.* Similarly, under the symbiotic relationship or nexus test, the private entity is deemed a state actor because of the close relationship between the state and the challenged action; in other words, the state must be "intimately involved in the challenged private conduct in order for that conduct to be attributed to the state." *Id.*

In the case at hand, Taylor submits that the defendants do fall within one of the above two tests because of the defendants' participation in the Hill-Burton Act. Taylor states that the this act intermeshes the private workings of the hospital with public funds provided for by both federal and state programs. Taylor, in fact, cites a Fourth Circuit case, *Simkins v. Moses H. Cone Memorial Hosp.*, 323 F.2d 959 (4th Cir. 1963), *cert. denied*, 376 U.S. 938 (1964), for support.

While *Simkins* did hold that Moses H. Cone Memorial Hospital was a state actor, the Court did so under quite distinguishable facts. The Court found that the Hill-Burton Act not only provided funds, but also regulated the hospital's conduct of allowing discrimination in its employment of African-American doctors. Hence, the private hospital's employment decisions were directly related to the state's directives under the Hill-Burton Act. Accordingly, the plaintiffs showed a significant nexus between the state and the private hospital to make the hospital's personnel decisions attributable to the state. *See Id.* at 967-69. Such is not the case here.

The defendants' alleged improper treatment of Ms. Taylor is not directly or indirectly attributable to the Hill-

Burton Act. Likewise, the intermeshing of state and federal programs which provide significant funding to the hospital does not turn the hospital's conduct into state action. As analyzed by the Sixth Circuit in a similar case, the Court found that several connections with the state, such as funding, regulations, and leasing of facilities, did not make the private entities decision state action; instead the connections must be shown to have some bearing on the actual complained of conduct. *See Wolotsky*, 960 F.2d at 1335-36.

> Plaintiff argues that all Portage Path's connections with the state of Ohio taken together make it a state actor for purposes of section 1983. However, none of the circumstances of this case, considered separately or together, make Portage Path a state actor for section 1983 purposes.
>
> First, the fact that Portage Path derives a significant portion of its funding from the government does not convert it into a state actor. **The actions of a private entity do not become state action merely because the government provides substantial funding to the private party.** Second the fact that Portage Path's contract with the Mental Health Services Board required it to comply with applicable state regulations did not convert it into a state actor. **State regulation of a private entity, even if it is extensive and detailed, is not enough to support a finding of state action. Rather, to show state action, the complaining party must demonstrate a sufficient nexus between the challenged action and the regulatory scheme alleged to be the impetus behind the private action.** [Such as in *Simkins*]. Plaintiff cannot

> demonstrate a nexus between the state regulation of Portage Path and his discharge because the state regulation of Portage Path did not involve the personnel policies at the facility which were made by the board of trustees.

Id. (citations omitted) (emphasis added).

Having reviewed the relevant case law, and having noted that the only connection alleged is the Hill-Burton Act, the Court can not say that the defendants' actions are "fairly attributable to the state." Therefore, the defendants' conduct can not be deemed state action, and all constitutional claims against them must be dismissed.

Assuming, however, that the funding and regulation of the hospital under the Hill-Burton Act could be considered a sufficient enough nexus to establish the defendants as state actors, which it could not, Taylor's claims are barred by the applicable one-year statute of limitations. Thus, Taylor's constitutional claims against the defendants still must be dismissed.

II. Taylor's Claims Are Barred By The Applicable Statute of Limitations

When Congress enacted 42 U.S.C. § 1983, Congress failed to put forth an applicable statute of limitations which would govern section 1983 claims. The United States Supreme Court in *Wilson v. Garcia*, 471 U.S. 261 (1985), determined that when a federal statute is devoid of an appropriate statute of limitations, the Court should "adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so." *Id.* at 266-67 (footnote omitted). The Court then decided that

the best approach was to borrow the most analogous state statute of limitations for the relief provided by 42 U.S.C. § 1983. The Court determined that the most analogous state statute of limitations, which would provide the most uniformity, was a state's statute of limitations for personal injury. *Id.* at 280; *see also Collard v. Kentucky Bd. Of Nursing*, 896 F.2d 179, 180 (6th Cir. 1990).

Following the Supreme Court's directive in *Wilson*, the Sixth Circuit found that KRS 413.140 is the applicable statute of limitations for a Kentucky plaintiff's 42 U.S.C. § 1983 claims. *Collard*, 896 F.2d at 182. KRS 413.140 mandates that an action be filed within one-year from when the cause of action accrued. Hence, for Taylor's constitutional claims to be timely under 42 U.S.C. § 1983, his complaint must have been filed no later than August 29, 1996, when Taylor knew or should have known that the defendants' alleged unconstitutional actions allegedly caused his mother's death.

Taylor argues, however, that his claims are not barred by the one-year statute of limitations for personal injury because his claims are not claims for personal injury, but instead are claims for Ms. Taylor's violation of her constitutional right to equal protection. Such distinction, however, is meritless, as any constitutional claim must be brought under 42 U.S.C. § 1983, which is governed by Kentucky's one-year statute of limitations for personal injury claims. *See id.*

For Taylor to bring forth such constitutional claims against a state actor, Taylor must proceed under 42 U.S.C. § 1983. Only through section 1983, may Taylor sue a state

actor in federal court and not be barred by sovereign immunity.

Under the Eleventh Amendment, the state and its agencies cannot be sued without waiving their sovereign immunity. 42 U.S.C. § 1983 is an exception to that rule. Because of Congress' enactment of section 1983, state officials may be sued for injunctive relief in their official capacities and for damages in their individual capacities. *See Hafer v. Melo*, 502 U.S. 21, 30-31 (1991); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 & n.10 (1989). Accordingly, for Taylor to bring these constitutional claims, including Ms. Taylor's right to equal protection, against the defendants as state actors, Taylor must do so through 42 U.S.C. § 1983. In so doing, he must have brought them within the appropriate time frame. Since his complaint was not filed until August 22, 1997, his constitutional claims are barred by the one-year statute of limitations.

III. TAYLOR HAS FAILED TO ADEQUATELY PLEAD A DISCRIMINATION CLAIM

Taylor alleges that the defendants discriminated against his mother because she was 81 years old. He states that the defendants performed invasive procedures on her against her will because of her age. Taylor submits that if Ms. Taylor had not been her age, that the defendants would not have forced her to undergo such treatment.

The defendants maintain that Taylor has failed to set forth a valid cause of action of age discrimination. The Court agrees.

Taylor, first and foremost, failed to state which statute or law the age discrimination claim falls under. The Court assumes, however, that he must be pleading age discrimination as a part of his equal protection claim, since his cause of action in no way could fall under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., as this matter has nothing to do with employment. Accordingly, since his age discrimination claims must fall within his equal protection claim, his age discrimination claim must fail; it is subject to the one-year statute of limitations for 42 U.S.C. § 1983 claims, as discussed above.

IV. EMTALA CLAIM FAILS

In his complaint, Taylor contends that the Emergency Medical Treatment and Active Labor Act ("EMTALA") was violated by the defendants. He, however, fails to say why. In his response to the motion to dismiss, though, Taylor states that the EMTALA was violated by (1) the defendants' failure to appropriately screen his mother when she initially was admitted to Paintsville Hospital, (2) the defendants' failure to adequately stabilize his mother before transport, and (3) the defendants' failure to appropriately transfer his mother.

The defendants maintain that for Taylor to have set forth a valid claim, Taylor must allege and prove that the defendants rendered disparate treatment for improper reasons to Ms. Taylor. The defendants note that Taylor has not alleged or shown such disparate treatment or improper motives. Hence, they submit that he has failed to state a claim.

Taylor argues, however, that he need only show one of these three things to have set forth a valid claim: (1) that his mother did not receive appropriate screening; (2) that his mother was not appropriately stabilized; or (3) that his mother was not appropriately transferred. Accordingly, he submits that he has pled and shown at least one, if not all three, of the above situations, and therefore he has stated a viable claim.

Giving Taylor the benefit of the doubt, the Court has looked at his response in order to determine whether he has set forth a proper claim under the EMTALA. The court has done so because Taylor's complaint failed to put forth any factual allegations which would state a claim. Instead, his complaint merely stated that the defendants have violated the EMTALA. Such conclusory allegations do not make for a sufficiently pled cause of action. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986).

Looking to his response, however, Taylor has still failed to sufficiently plead his claim. While Taylor is correct that any three of the above failures by the defendants can state a cause of action under the EMTALA, Taylor fails to realize that he must also show that the defendants had an improper motive in failing to properly screen, stabilize or transfer Ms. Taylor. *See Roberts v. Galen of Virginia, Inc.*, 111 F.3d 405, 411 (6th Cir. 1997); *see also Cleland v. Bronson Health Care Group, Inc.*, 917 F.2d 266, 272 (6th Cir. 1990). Taylor has failed to set forth any improper motive on the part of the defendants in both his complaint and in his response. Instead, he has merely stressed that Paintsville Hospital did not properly screen, stabilize and transfer his mother.

Additionally, Taylor's reasons for the improper screening are based on erroneous conclusions. First, Taylor states that the discharging doctor stated that CA, coronary arrest, needed to be ruled out.[1] Based on the Court's reading of the discharge summary, *see* Exhibit A to Defendants' Memorandum in Support of Dismissal, the discharging doctor states that an intracranial hemorrhage needs to be ruled out, not coronary arrest.[2]

Second, Taylor submits that she did not receive proper screening because congestive heart failure was not ruled out. Once again, however, the discharge summary contradicts such argument. The discharge summary shows that Ms. Taylor's congestive heart failure was improved. Thus, Taylor's reasons for his claim that the defendants did not properly screen Ms. Taylor are based on an erroneous reading of the discharge summary.

Lastly, Taylor bases his contention that his mother was not stabilized on the fact that she was transferred five hours after the attending physician determined that she should be transferred. Such allegation does not support a claim that she was not stable. *See Thornton v. Southwest Detroit Hosp.*, 895 F.2d 1131, 1134-35 (6th Cir. 1990); *cf. Delaney v. Cade*, 986 F.2d 387, 392-93 (10th Cir. 1993). Likewise, the hospital was allowed to transfer her,

---

[1] He cites to exhibit three in support. However, the Court cannot find **any** exhibits attached to his response or his complaint.

[2] Incidently, the possibility of an intracranial hemorrhage is why Ms. Taylor was being transferred from Paintsville Hospital to King's Daughter's Hospital. Dr. Shields, a neurologist, was to examine her there.

or even discharge her, if it believed her to be stabilized. *Thornton*, 895 F.2d at 1134. Thus, Taylor has not set forth any facts which make out a sufficiently pled complaint of failure to properly stabilize or transfer his mother.

Regardless, as noted above, even if Taylor had set forth sufficient facts to support a claim of improper screening, stabilization and transfer, Taylor still has not put forth any improper motive. The age discrimination claim will not suffice, particularly as it evidences the defendants' desire to treat Ms. Taylor by allegedly making her undergo invasive procedures.

As noted by the Sixth Circuit, an EMTALA claim " 'is not a substitute for state law malpractice actions, and was not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence.' " *Roberts*, 111 F.3d at 409 (quoting *Power v. Arlington Hosp. Ass'n*, 42 F. 3d 851, 856 (4th Cir. 1994)). Thus, without showing any improper motivation, Taylor's claims really sound in negligence; and thus, to withstand a motion to dismiss, Taylor would have had to have set forth a claim of medical malpractice against the defendants if he believed the defendants had improperly treated his mother. Accordingly, Taylor's EMTALA claim fails.

V. NO STATE LAW CLAIMS PLED

The defendants submit that Taylor's state law claims are barred by the appropriate statute of limitations. Looking at his complaint, however, the Court, does not find that Taylor has put forth any state law claims. Moreover,

it appears that Taylor is in accord with the Court's thinking, as he did not make any response or argument as to any state law claims in his response to the defendants' motion to dismiss.

In the event, though, that Taylor had put forth any state law claims, the Court would decline to exercise supplemental jurisdiction over them. 28 U.S.C. § 1367(c)(3) states that a federal district court may decline to exercise supplemental jurisdiction where "the district court has dismissed all claims over which it has original jurisdiction." Such is the case here, and thus the Court would choose not to decide the remaining claims. *See Jones v. City of Carlisle, Kentucky*, 3 F.3d 945, 951 n.6 (6th Cir. 1993), *cert. denied*, 510 U.S. 1177 (1994).

Accordingly having determined that all claims against the defendants should be dismissed in this action,

IT IS ORDERED:

(1) That the defendants' motions to dismiss [Record No. 4] be, and the same hereby is, **GRANTED**.

(2) That the plaintiff's federal and constitutional claims be, and the same hereby are, **DISMISSED WITH PREJUDICE**.

(3) That the defendants' motion for oral arguments [Record No. 6] on the motion to dismiss be, and the same hereby is, **DENIED**.

(4) That any further proceedings, be, and the same hereby are, **CONTINUED GENERALLY**.

(5) That a final judgment will be entered contemporaneously herewith.

This the 31st day of December, 1997.

/S/ JOSEPH M. HOOD
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: 1-5-98

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION
CASE NO. 7:97CV332

ESTATE OF VERA TAYLOR, and
GLEN TAYLOR, Executor — PLAINTIFF

VS.

COMPLAINT

PAUL B. HALL REGIONAL MEDICAL CENTER, d/b/a PAINTSVILLE HOSPITAL CO.; and HEALTH MANAGEMENT ASSOCIATES, INC. — DEFENDANT

---

*Comes now the Plaintiff, GLEN TAYLOR, as executor of the estate of VERA TAYLOR, and for his cause of action against the Defendants, PAUL B. HALL REGIONAL MEDICAL CENTER and HEALTH MANAGEMENT ASSOCIATES, INC., states as follows:

INTRODUCTION

This is a civil action seeking damages against Defendants for committing acts under color of state law which deprived the Plaintiff, Vera Taylor, of rights secured under the Constitution and the laws of the United States. The Court has jurisdiction of this action under 42 USC 1983, the fact that it involves federal question, and exceeds the jurisdictional amount of the Court.

---

*The Complaint is reproduced verbatim, including any errors in spelling, punctuation or grammar which appear in the original document.

COUNT I

1. That the Plaintiff Glen Taylor, resides at 1153 State St. Paintsville, Kentucky 41240. Glen Taylor is the son, and executor of the estate of Vera Taylor.

2. That Vera Taylor resided at 1143 State St. Paintsville, Kentucky 41240 prior to her death on August 29, 1995.

3. That at all times relevant hereto, the Defendant Medical Center was a duly licensed hospital in Paintsville, Kentucky and is a Kentucky corporation. It's agent for service of process is CT Corporate Systems, Kentucky Home Life Building, Room 1102, Louisville, Kentucky 40202. Its principal office address is 5811 Pelican Bay Blvd., Ste, 500, Naples, Florida 33963.

4. The Defendant, Health Management Associates, Inc. (hereinafter "HMA"), is a Kentucky Corporation acting in the capacity of the parent company of Paul B. Hall Regional Medical Center. HMA's agent for service of process is also CT Corporate Systems, Kentucky Home Life Building, Room 1102, Louisville, Kentucky 40202. Its principal office address is 5811 Pelican Bay Blvd., Ste. 500, Naples, Florida 33963

5. That Defendant, Paintsville Hospital, participates as a part of intermeshing state and federal programs involving the use of public funds, in a common plan to allocate available hospital and medical resources and thus establishes its activities as that of a state agent and was thus acting as such.

6. That the Plaintiff, Vera Taylor was a federal Medicare recipient.

7. That on August 22, 1995 the Plaintiff, Vera Taylor was admitted into the Defendant Medical Center for complaints of shortness of breath.

8. That the patient was admitted by Dr. Aranas, the emergency room physician, who did not examine the Plaintiff, Vera Taylor for approximately twelve hours.

9. That on the above mentioned date, the Plaintiff, Vera Taylor was diagnosed with pneumonia when in actuality, she was suffering the onset of congestive heart failure.

10. That the Defendant Medical Center began treating the Plaintiff, Vera Taylor for the misdiagnosed pneumonia, in such a manner that was fatally inconsistent with the onset of congestive heart failure.

11. That on or about August 24, 1995, prior to or near 4:00 p.m. the Plaintiff Vera Taylor, suffered a stroke due to the intentional acts of the Defendant's. Said acts consists of improper treatment, abuse, mismanagement, and misdiagnoses.

12. That the Plaintiff's condition was noted by family members who relayed her physical state to hospital personnel. The family members were improperly informed that the Plaintiff, Vera Taylor, had been sedated and that was the explanation for her state of her unconsciousness.

13. That family members noted the condition of the Plaintiff, Vera Taylor, at or about 4:00 p.m. on August 24, 1995 but were assured by hospital personnel that the Plaintiff, Vera Taylor was simply resting.

14. That even after her condition of unconsciousness and the right side of her face being flaccid and wrinkled was noted to the hospital staff, the staff intentionally disregarded the families concerns and the Plaintiff's safety and wellbeing by not checking on her condition until at least fifteen minutes had past.

15. That after the above mentioned condition was noted, a CT scan was performed; however, there was no appropriate hospital personnel on hand to render an interpretation of the examination.

16. That shortly after Dr. Aranas was informed of the Plaintiff's condition, he issued an order to transfer the Plaintiff, Vera Taylor, to the nearest appropriate facility.

17. That although the above mentioned order was issued, the Hospital's first attempt to contact an ambulance service was not until 7:05 p.m.

18. That the family was then instructed to proceed to King's Daughter's Hospital, in Ashland, Kentucky, to await the arrival of the Plaintiff, Vera Taylor.

19. That the previously mention transportation arranged on or about 7:05 p.m. was canceled on or about 9:05 p.m. and another ambulance was called.

20. That after the delay, four family members returned to the Defendant, hospital on or about 9:30 p.m. only to discover that the Plaintiff, Vera Taylor had not yet been transferred and that she must await a specific ambulance co. (River City) for her transportation.

21. That the Plaintiff, Vera Taylor arrived at King's Daughter's Hospital on August 26, 1995 at 12:32 a.m.

22. That, upon arrival, a second CT Scan was performed wherein the radiologist and other specialists discovered the Plaintiff, Vera Taylor, to be brain dead on her left side.

23. That on August 29, 1995, the Plaintiff, Vera Taylor died as a direct result of the intentional acts of the Defendant's. Specifically it's improper treatment, abuse, mismanagement, and misdiagnoses of the Defendant Medical Center and as such deprived her of her right to life as provided in the United States Constitution.

COUNT II

1. The Plaintiff reiterates and realleges all allegations previously made.

2. That on the date of admittance, August 22, 1995, the Plaintiff was not informed of her right to accept or refuse medical treatments. The hospital was required to and did utilize an "advanced directive" acknowledgment form. This document insures that parties are informed of their freedom to, accept or refuse medical treatments and their right to formulate "advanced directives" to inform the Defendant Medical Center of their wishes.

3. That on or about August 20, 1995, the Plaintiff's, Vera Taylor's, signature was forged on the "advanced directive" acknowledgment form stating that she had not executed an "advance directive."

4. That on August 22, 1995, the Plaintiff, Vera Taylor expressly stated to the Defendant Medical Center's Staff that she did not want any arterial blood gas tests to be

performed. This statement was dully noted on the Plaintiff's medical chart.

5. That despite the Plaintiff, Vera Taylor's pleas and protests, as well of that of her family, the hospital staff continued to forcibly administer these painful arterial blood gas procedures.

6. That on August 23, 1995, the Plaintiff, Vera Taylor was denied her right to liberty and right to adequate medical treatment as established in the United States Constitution, by having several arterial blood gas tests forced upon her, while she was verbally expressing her desire not to have this procedure performed, and while she was being physically restrained by hospital personnel.

COUNT III

1. The Plaintiff reiterates and realleges all allegations previously made.

2. That the Plaintiff, Vera Taylor was denied her right to liberty and adequate medical treatment, as established in the Fourteenth Amendment of the United States Constitution, by not being informed of her right to refuse or accept certain medical treatment.

COUNT IV

1. The Plaintiff reiterates and realleges all allegations previously made.

2. That the Defendant's intentional misconduct by not providing for the Plaintiff's, Vera Taylor's, ambulance

transportation, deprived her of her right to liberty, safety, and freedom of movement as provided in the United States Constitution.

COUNT V

1. The Plaintiff reiterates and realleges all allegations previously made.

2. That the Defendant, Paul B. Hall Regional Medical Center, failed to provide the Plaintiff, Vera Taylor, the benefits and protection of hospital policies and those protocols related to state and federal statutes pertaining to the application of specific medical procedures, state and federal administrative regulations regarding CT scan interpretations during critical situations, and as a result denied the Plaintiff, Vera Taylor of her constitutional right to adequate medical care and treatment.

COUNT VI

1. The Plaintiff reiterates and realleges all allegations previously made.

2. That the Plaintiff, Vera Taylor, was an elderly lady, being eighty-one years of age and as such is in a protected class of individuals.

3. That due to the Plaintiff's age, she was discriminated against by hospital personal by having several invasive procedures performed upon her against her will. That had she not been in this protected class, she would not have been physically forced to submit to the above mentioned arterial blood gas tests.

COUNT VII

1. That the Plaintiff reiterates and realleges all allegations previously made.

2. That the Defendant is goverened under the regulations and guidelines of the Emergency Medical Treatment and Active Labor Act (EMTALA).

3. That the Defendant violated the provisions of this act.

4. That due to the Defendant's violation of the above mentioned act, the Plaintiff suffered harm.

5. That under the act, the Plaintiff is able to recover damages in accordance with state personal injury guidelines.

WHEREFORE, the estate of Vera Taylor, through its executor, Glen Taylor, demands judgment against the Defendant's, jointly and severally, for such damages as may be proven at trial, for costs expended, attorney's fees incurred herein, trial by jury, and for any and other relief to which may be entitled.

/S/ BENJAMIN C. HALL
BENJAMIN C. HALL
P. O. BOX 1455
PIKEVILLE, KY 41502
(606) 437-0039
ATTORNEY FOR PLAINTIFFS

I hereby state that I have read the foregoing Complaint and that the statements contained therein are true and correct as I verily believe.

/S/ GLEN TAYLOR
GLEN TAYLOR
EXECUTOR OF THE
ESTATE of VERA TAYLOR

SUBSCRIBED AND SWORN to before me, a notary public, by Glen Taylor, executor of the estate of Vera Taylor, the Plaintiff herein, on this the 21 day of August, 1997.

/S/ Valerie (Thacker) Coleman
NOTARY PUBLIC

My Commission expires: 9-9-99.

42 U.S.C. §1395dd. Examination and treatment for emergency medical conditions and women in labor

(a) Medical screening requirement. In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this title [42 USCS §§1395 et seq.]) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1)) exists.

(b) Necessary stabilizing treatment for emergency medical conditions and labor. (1) In general. If any individual (whether or not eligible for benefits under this title [42 USCS §§1395 et seq.]) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either –

> (A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or
>
> (B) for transfer of the individual to another medical facility in accordance with subsection (c).

(2) Refusal to consent to treatment. A hospital is deemed to meet the requirement of paragraph (1)(A) with respect to an individual if the hospital offers the individual the further medical examination and treatment

described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment, but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.

(3) Refusal to consent to transfer. A hospital is deemed to meet the requirement of paragraph (1) with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with subsection (c) and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.

(c) Restricting transfers until individual stabilized. (1) Rule. If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B)), the hospital may not transfer the individual unless –

> (A)(i) the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility,
>
> (ii) a physician (within the meaning of section 1861(r)(1) [42 USCS §1395x(r)(1)]) has signed a

certification that based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer, or

(iii) if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician (as defined in section 1861(r)(1) [42USCS §1395x(r)(1)]), in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and

(B) the transfer is an appropriate transfer (within the meaning of paragraph (2)) to that facility.

A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.

(2) Appropriate transfer. An appropriate transfer to a medical facility is a transfer –

(A) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;

(B) in which the receiving facility –

(i) has available space and qualified personnel for the treatment of the individual, and

(ii) has agreed to accept transfer of the individual and to provide appropriate medical treatment;

(C) in which the transferring hospital sends to the receiving facility with all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(1)(C)) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

(D) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

(E) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals transferred.

(d) Enforcement. (1) Civil monetary penalties. (A) A participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than $50,000 (or not more than $25,000 in the

case of a hospital with less than 100 beds) for each such violation. The provisions of section 1128A [42 USCS §1320a-7a] (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply with respect to a penalty or proceeding under section 1128A(a) [42 USCS §1320a-7a(a)].

(B) Subject to subparagraph (C), any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who negligently violates a requirement of this section, including a physician who –

(i) signs a certification under subsection (c)(1)(A) that the medical benefits reasonably to be expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not outweigh the risks, or

(ii) misrepresents an individual's condition or other information, including a hospital's obligations under this section, is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is gross and flagrant or is repeated, to exclusion from participation in this title [42 USCS §§1395 et seq.] and State health care programs. The provisions of section 1128A [42 USCS §1320a-7a] (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to a civil money penalty and exclusion under this subparagraph in the same manner as such provisions apply

with respect to a penalty, exclusion, or proceeding under section 1128A(a) [42 USCS §1320a-7a(a)].

(C) If, after an initial examination, a physician determines that the individual requires the services of a physician listed by the hospital on its list of on-call physicians (required to be maintained under section 1866(a)(1)(I) [42 USCS §1395cc(a)(1)(I)]) and notifies the on-call physician and the on-call physician fails or refuses to appear within a reasonable period of time, and the physician orders the transfer of the individual because the physician determines that without the services of the on-call physician the benefits of transfer outweigh the risks of transfer, the physician authorizing the transfer shall not be subject to a penalty under subparagraph (B). However, the previous sentence shall not apply to the hospital or to the on-call physician who failed or refused to appear.

(2) Civil enforcement. (A) Personal harm. Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(B) Financial loss to other medical facility. Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(C) Limitations on actions. No action may be brought under this paragraph more than two years after the date of the violation with respect to which the action is brought.

(3) Consultation with peer review organizations. In considering allegations of violations of the requirements of this section in imposing sanctions under paragraph (1), the Secretary shall request the appropriate utilization and quality control peer review organization (with a contract under part B of title XI [42 USCS §§1320c et seq.]) to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall request such a review before effecting a sanction under paragraph (1) and shall provide a period of at least 60 days for such review.

(e) Definitions. In this section:

(1) The term "emergency medical condition" means –

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in –

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part; or

(B) with respect to a pregnant women who is having contractions –

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(2) The term "participating hospital" means hospital that has entered into a provider agreement under section 1866 [42 USCS §1395cc].

(3)(A) The term "to stabilize" means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta).

(B) The term "stabilized" means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta).

(4) The term "transfer" means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.

(5) The term "hospital" includes a rural primary care hospital (as defined in section 1861(mm)(1) [42 USCS §1395x(mm)(1)]).

(f) Preemption. The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.

(g) Nondiscrimination. A participating hospital that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

(h) No delay in examination or treatment. A participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) or further medical examination or treatment required under subsection (b) in order to inquire about the individual's method of payment or insurance status.

(i) Whistleblower protections. A participating hospital may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(iii) or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of this section.

Supreme Court, U.S.
FILED
DEC 6 1999
OFFICE OF THE CLERK

No. 99-602

IN THE

Supreme Court of the United States

GLEN TAYLOR, Executor of the Estate of VERA TAYLOR,

Petitioner,

v.

PAUL B. HALL REGIONAL MEDICAL CENTER, d/b/a PAINTSVILLE HOSPITAL CO. and HEALTH MANAGEMENT ASSOCIATES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

D. C. OFFUTT, JR.
Counsel of Record
OFFUTT, FISHER & NORD
Attorneys for Respondents
949 Third Avenue
Suite 300
P.O. Box 2868
Huntington, WV 25728-2868
(304) 529-2868

156554

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether a hospital can be held liable to a patient for an alleged violation of the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, when the hospital screened the patient, admitted her to the hospital, treated her medical condition and stabilized her before transfer?

2. Whether the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, creates a federal cause of action for medical malpractice and is a substitute for state law medical malpractice claims?

STATEMENT PURSUANT TO RULE 29.6

Respondent, Health Management Associates, Inc., is the parent company of Paul B. Hall Regional Medical Center. No publicly held company owns 10% or more of the stock of either Respondent.

TABLE OF CONTENTS

	Page
Questions Presented	i
Statement Pursuant to Rule 29.6	ii
Table of Contents	iii
Table of Cited Authorities	iv
Statement of Jurisdiction	1
Statement of the Case	1
Reasons for Denying the Writ	7
I. Certiorari Should Not Be Granted Because The Complaint Fails To State An EMTALA Claim.	7
II. The Petition For Writ of Certiorari Should Be Denied Because EMTALA Was Not Intended To Create a Federal Cause of Action for Medical Malpractice	11
Conclusion	13

TABLE OF CITED AUTHORITIES

Page

Cases:

Baber v. Hospital Corp. of America, 977 F.2d 872 (4th Cir. 1992) 11

Brooks v. Maryland Gen. Hosp. Inc., 996 F.2d 708 (4th Cir. 1993) 10, 11

Bryan v. University of Virginia Medical Center, 95 F.3d 349 (4th Cir. 1996) 9

Cleland v. Bronson Healthcare Corp, Inc., 917 F.2d 266 (6th Cir. 1990) 12

Conner v. George W. Whitesides Co., 834 S.W.2d 632 (Ky. 1992) 8

Correa v. Hospital San Francisco, 69 F.3d 1184 (1st Cir. 1995), *cert. denied*, 517 U.S. 1136 (1996) 12

Eberhardt v. City of Los Angeles, 62 F.3d 1253 (9th Cir. 1995) 12

Gatewood v. Washington Healthcare Corp., 933 F.2d 1037 (D.C. Cir. 1991) 10, 12

Hardy v. New York City Health & Hospitals Corp., 164 F.3d 789 (2nd Cir. 1999) 10

Cited Authorities

	Page
Holcomb v. Monahan, 30 F.3d 116 (11th Cir. 1994)	13
Marshall v. East Carroll Parish Hospital, 134 F.3d 319 (5th Cir. 1998)	9, 10, 12
Papasan v. Allain, 478 U.S. 265 (1986)	7
Repp v. Anadarko Mun. Hosp., 43 F.3d 519 (10th Cir. 1994)	12, 13
Roberts v. Galen of Virginia, Inc., 525 U.S. 249 (1999)	13
Scheid v. Fanny Farmer Candy Shops, Inc., 59 F.2d 434 (6th Cir. 1988)	7
Southeastern Ky. Baptist Hosp. v. Gaylor, 756 S.W.2d 467 (Ky. 1988)	8
Summers v. Baptist Medical Center Arkadelphia, 91 F.3d 1132 (8th Cir. 1996)	9, 12
Vickers v. Nash General Hospital, Inc., 78 F.3d 139 (4th Cir. 1996)	9, 12
Statutes:	
28 U.S.C. § 1254(1)	1
42 U.S.C. § 1395dd	i, 7

Cited Authorities

	Page
42 U.S.C. § 1395dd(a)	4, 11
42 U.S.C. § 1395dd(b)	4, 12
42 U.S.C. § 1395dd(c)	4, 12
42 U.S.C. § 1395dd(f)	11
KY. REV. STAT. ANN. § 413.140(1)(e) (Baldwin 1991)	7
KY. REV. STAT. ANN. § 413.180(1) (Baldwin 1991)	8
United States Constitution:	
Fourteenth Amendment	3
Rules:	
Fed. R. Civ. P. 8(a)	5, 7, 9
Fed. R. Civ. P. 8(a)(2)	7
Fed. R. Civ. P. 12	5
Fed. R. Civ. P. 12(b)(6)	3, 6
Fed. R. Civ. P. 56	5, 6
United States Supreme Court Rule 10	1

STATEMENT OF JURISDICTION

Jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1). The considerations governing this Court's jurisdiction on a writ of certiorari are enumerated in Rule 10 of the Rules of the Supreme Court of the United States. That rule provides, in relevant part, "A petition for a writ of certiorari will only be granted for compelling reasons." Respondents submit that this is a case of inadequate pleading in a Complaint filed in federal court by petitioner to circumvent Kentucky state law which would bar petitioner's claim under the relevant statute of limitations and it must be denied.

STATEMENT OF THE CASE

Paul B. Hall Regional Medical Center is a small hospital located in Paintsville, Kentucky, which offers primary medical care to the residents of rural Eastern Kentucky. The hospital has an emergency department and is licensed by the State of Kentucky for forty (40) inpatient beds. Petitioner's decedent, Vera Taylor, came to the emergency department at Paul B. Hall Regional Medical Center on August 22, 1995, at 10:56 p.m. complaining of shortness of breath. Ms. Taylor, who was eighty-one (81) years old, was evaluated by a physician in the hospital's emergency department.[1]

---

1. The discharge summary contained in Ms. Taylor's medical records maintained by Paul B. Hall Regional Medical Center which was attached as an exhibit to Respondents' Motion to Dismiss and specifically referred to by the District Court in its opinion dismissing Petitioner's claim, is reproduced in the Appendix hereto at pp. A1-A2.

In the emergency room, Ms. Taylor had a chest x-ray and an electrocardiogram. (A1). Her blood count was tested and she was administered fluids by I.V. to help with her hydration. (A1). She was administered oxygen, antibiotics and breathing medications. (A1). After conducting an examination and testing Ms. Taylor, the emergency room physician diagnosed her as suffering from acute congestive heart failure as well as acute respiratory distress and admitted her to the hospital in the early morning hours of August 23, 1995.

Ms. Taylor was treated in the hospital for congestive heart failure and respiratory distress. (A1). She responded to the prescribed treatment and her overall condition greatly improved. (A1). On August 24, 1995, at approximately 4:30 p.m., while still a patient in the hospital, Ms. Taylor became suddenly unresponsive and demonstrated weakness in her lower extremities and left arm. (A1). A CT scan was performed which showed a possible intracranial hemorrhage (stroke). (A1). Respondents contacted King's Daughters' Hospital, a larger medical facility located in nearby Ashland, Kentucky, where Ms. Taylor could obtain an evaluation and treatment by a neurosurgeon, services which were not available at Paul B. Hall Regional Medical Center. She was transferred by ambulance to King's Daughters' Hospital on the evening of August 24, 1995. (A2).

Ms. Taylor died as a patient at King's Daughters' Hospital four (4) days later, on August 29, 1995. Petition for Writ of Certiorari 3. Glen Taylor, her husband, was appointed executor of Ms. Taylor's estate on September 13, 1995. He filed this lawsuit against Respondents in the United States District Court for the Eastern District of Kentucky, on August 22, 1997, alleging seven (7) separate causes of action against Respondents.

Count I of the complaint alleged that Respondents deprived Ms. Taylor her of her right to life as provided in the United States Constitution by improper treatment, abuse, mismanagement and misdiagnosis. Count II of the complaint alleged that Ms. Taylor was denied her right to liberty and right to adequate medical treatment as established in the United States Constitution by having arterial blood gas tests forced upon her against her will. Count III of the complaint alleged that Ms. Taylor was denied her right to liberty and adequate medical treatment as established in the Fourteenth Amendment of the United States Constitution by not being informed of her right to refuse or accept certain medical treatment. Count IV of the complaint alleged that Respondents intentionally failed to provide ambulance transportation for Ms. Taylor, thus depriving her of her right to liberty, safety and freedom of movement as guaranteed by the United States Constitution. Count V of the complaint alleged that Respondents deprived Ms. Taylor of her constitutional right to adequate medical care and treatment in violation of the United States Constitution by failing to provide her with the benefits and protection of hospital policies and protocols. Count VI of the complaint alleged that Respondents discriminated against Ms. Taylor due to her age by forcing her to have invasive procedures performed upon her against her will. Count VII of the complaint alleged unspecified violations of the Emergency Medical Treatment and Active Labor Act (EMTALA). Petition for Writ of Certiorari A24-A32.

The Respondents moved the District Court to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). The District Court granted the Respondents' motion to dismiss and entered judgment for Respondents on all of the counts contained in the complaint. In dismissing the EMTALA

claim, the Court ruled that Petitioner failed to set out any facts in the complaint which made out a sufficiently pled claim for failure to properly screen, stabilize or transfer Ms. Taylor. Petition for Writ of Certiorari A21.

The District Court recognized the fundamental flaw in the Petitioner's effort to state an EMTALA claim. This is not a case where the hospital refused to provide an appropriate medical screening examination in violation of 42 U.S.C. § 1395dd(a). The hospital examined Ms. Taylor and admitted her as a patient. This is not a case where the hospital failed to provide necessary stabilizing treatment pursuant to 42 U.S.C. § 1395dd(b). The hospital treated her medical conditions after she was admitted. This is not a case where the hospital transferred a patient without properly stabilizing the patient's medical condition in violation of 42 U.S.C. § 1395dd(c). Although the hospital transferred Ms. Taylor to another hospital after she suffered a stroke, the complaint does not allege that she was improperly transferred without being stabilized. The complaint alleges that there was an improper delay in the transfer. Petition for Writ of Certiorari A27. All of the allegations contained in the sparsely worded complaint sound in negligence. The District Court properly held that an EMTALA claim "is not a substitute for state law malpractice actions, and was not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence." Petition for Writ of Certiorari A21.

The District Court went further and examined whether the complaint was otherwise sufficient to plead an EMTALA claim. In this regard, the District Court examined the hospital discharge summary which was attached to Respondents' motion to dismiss as an exhibit. In doing so, the District

Court construed Respondents' motion as a motion for summary judgment under Fed. R. Civ. P. 56, as permitted by Rule 12(b).

In reviewing the discharge summary, the District Court pointed out several factual inaccuracies in the complaint. The Court noted that Petitioner's assertion that the discharging doctor stated that coronary arrest (CA) needed to be ruled out was contradicted by the discharge summary which stated that intercranial hemorrhage needs to be ruled out. Petition for Writ of Certiorari A20. Second, the Court noted that Petitioner's assertion that Ms. Taylor did not receive proper screening because congestive heart failure was not ruled out was contradicted by the discharge summary which showed that her congestive heart failure was treated and improved. Petition for Writ of Certiorari A20. Lastly, the District Court pointed out that Petitioner's contention that Ms. Taylor was not stabilized at the time of her transfer, based on the fact that she was transferred five (5) hours after the attending physician determined that she should be transferred, did not support a claim that she was not stable at the time of the transfer. Petition for Writ of Certiorari A20-21.

Petitioner only appealed the District Court's dismissal of the EMTALA claim. Therefore, the only issue before the Sixth Circuit Court of Appeals was whether the District Court erred in dismissing Taylor's EMTALA claim. Petition for Writ of Certiorari A2. The Sixth Circuit agreed that Petitioner failed to properly plead an EMTALA claim in the complaint. Petition for Writ of Certiorari A4. The Sixth Circuit held that "bare assertions of legal conclusions" are insufficient to satisfy Fed. R. Civ. P. 8(a), which requires every complaint to include "either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." Petition for Writ of Certiorari A5.

After upholding the District Court's dismissal of the EMTALA claim pursuant to Rule 12(b)(6), the Circuit Court also examined the District Court's alternative ruling that, even if Respondent had properly pled his complaint, the EMTALA claim would still fail because the record demonstrated that Respondents did not improperly screen, stabilize or transfer Ms. Taylor. Petition for Writ of Certiorari A4. The Sixth Circuit noted that the District Court went outside the pleadings by examining Ms. Taylor's hospital discharge summary and, to that limited extent, construed Respondent's Motion as one for summary judgment under Fed. R. Civ. P. 56, instead of one for dismissal under Rule 12(b)(6). Reviewing the decision, *de novo*, the Court of Appeals found that the District Court's judgment should be affirmed because no genuine issue of material dispute exists as to the material facts cited by the District Court, and those facts demonstrate that Respondents were entitled to judgment as a matter of law. Petition for Writ of Certiorari A4. The Court of Appeals also found that Petitioner's complaint pled a medical malpractice action, not an EMTALA claim. The Court noted that an EMTALA claim is not a substitute for a state law medical malpractice action and EMTALA was not intended to guarantee proper diagnosis or provide a federal remedy for a medical misdiagnosis or other medical negligence. Petition for Writ of Certiorari A6.

REASONS FOR DENYING THE WRIT

I.

CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE COMPLAINT FAILS TO STATE AN EMTALA CLAIM.

As pointed out in the opinions of the District Court and the Sixth Circuit Court of Appeals, Petitioner failed to properly plead a valid cause of action against Respondents in this matter as required by Rule 8(a) of the Federal Rules of Civil Procedure. Although each court commented about the requirements of 42 U.S.C. § 1395dd, they did so only after specifically holding that Count VII of the plaintiffs' complaint, which alleged a violation of EMTALA, was inadequate to plead a valid cause of action to satisfy Fed. R. Civ. P. 8(a). Fed. R. Civ. P. 8(a) requires every complaint to include a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To satisfy the notice pleading requirements, a complaint must contain more than bare assertions of legal conclusions. Such conclusory allegations do not sufficiently plead a cause of action. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Scheid v. Fanny Farmer Candy Shops, Inc.*, 59 F.2d 434, 436 (6th Cir. 1988).

Petitioner's complaint contains a hodgepodge of vaguely stated federal constitutional law claims. At the time the complaint was filed in federal court, Petitioner was beyond the statute of limitations to bring an action for medical malpractice in Kentucky. Kentucky has a one (1) year statute of limitations for medical malpractice claims. KY. REV. STAT. ANN. § 413.140(1)(e) (Baldwin 1991). In Kentucky, if a

personal representative is appointed within one (1) year of the date of death, he is then granted one (1) year from the date of his appointment to file suit. If no suit is filed within that time, the action for wrongful death dies. KY. REV. STAT. ANN. § 413.180(1) (Baldwin 1991). *Conner v. George W. Whitesides Co.*, 834 S.W.2d 632 (Ky. 1992), *Southeastern Ky. Baptist Hosp. v. Gaylor*, 756 S.W.2d 467 (Ky. 1988). Ms. Taylor died on August 29, 1995. Glen Taylor was appointed executor of her estate on September 13, 1995. Consequently, under Kentucky law, Mr. Taylor had to file his suit by September 13, 1996. He filed this lawsuit in federal court on August 22, 1997, eleven (11) months too late to bring a claim of malpractice based on Kentucky law.

In his complaint, Petitioner plead his EMTALA claim as follows:

COUNT VII

1. That Plaintiff reiterates and realleges all allegations previously made.

2. That the Defendant is governed under the regulations and guidelines of the Emergency Medical Treatment and Active Labor Act (EMTALA).

3. That the Defendant violated the provisions of this act.

4. That due to the Defendant's violation of the above mentioned act, the Plaintiff suffered harm.

5. That under the act, the Plaintiff is able to recover damages in accordance with state personal injury guidelines.

Petition for Writ of Certiorari A31.

Even if this pleading is sufficient under Rule 8(a) of the Federal Rules of Civil Procedure, the District Court specifically found the plaintiff's complaint failed to state an EMTALA claim. The hospital discharge summary shows clearly that Ms. Taylor was provided emergency care, she was administered screening examinations in the emergency room, she was hospitalized and her condition was stable before transfer, all as required by EMTALA. EMTALA imposes a limited duty on hospitals with emergency rooms to provide emergency care to all who come there. The purpose of the Emergency Medical Treatment and Active Labor Act was to address the "dumping" of uninsured, underinsured, or indigent patients into other hospitals or hospitals who did not want to treat them. *Summers v. Baptist Medical Center Arkadelphia*, 91 F.3d 1132 (8th Cir. 1996). Its core purpose is to deal with the problem of patients being turned away from emergency rooms for non-medical reasons. *Bryan v. University of Virginia Medical Center*, 95 F.3d 349 (4th Cir. 1996). It is not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence. *Vickers v. Nash General Hospital, Inc.*, 78 F.3d 139 (4th Cir. 1996).

Even if a hospital physician who performs an examination makes a misdiagnosis that could subject him and the hospital to liability in a medical malpractice action under state law, the hospital is not liable under EMTALA. *Marshall v. East Carroll Parish Hospital*, 134 F.3d 319

(5th Cir. 1998). EMTALA was enacted to fill a void in traditional state tort law by imposing on hospitals a legal duty which did not exist under common law, to provide emergency care to all. *See Brooks v. Maryland Gen. Hosp. Inc.*, 996 F.2d 708, 714-15 (4th Cir. 1993); *Hardy v. New York City Health & Hospitals Corp.*, 164 F.3d 789 (2nd Cir. 1999). EMTALA creates a new cause of action, generally unavailable under state tort law, for what amounts to a failure to treat. *Gatewood v. Washington Healthcare Corp.*, 933 F.2d 1037, 1041 (D.C. Cir. 1991).

As Ms. Taylor's discharge summary clearly shows, she was seen and evaluated in the emergency room at Paul B. Hall Regional Medical Center. After she was admitted as a patient to the hospital and received medical treatment, her condition stabilized and even improved. She suffered a stroke two (2) days after her admission to the hospital. Paul B. Hall Regional Medical Center did not have a neurosurgeon on staff to evaluate or treat Ms. Taylor for this new medical condition which came about two (2) days after she presented to the hospital's emergency room. She was stabilized and transferred to a larger hospital where she died five (5) days later. There is no allegation in the complaint that Ms. Taylor was not stable at the time of the transfer or that she suffered any deterioration in her condition or resultant harm, as a result of the transfer. In fact, paragraphs 16 through 22 of the complaint allege that there was a delay in transfer, not that Ms. Taylor was transported improperly. Petition for Writ of Certiorari A27-A28. Petitioner's complaint did not allege that Ms. Taylor was not stabilized before her transfer to King's Daughters' Hospital. It alleges that her transfer was not made in a timely fashion once her treating physician determined that she should be transferred. A negligent delay in transfer may constitute negligence or malpractice under

state law, but cannot support an Emergency Medical Treatment and Active Labor Act (EMTALA) claim for an inappropriate transfer. The transfer requirements of EMTALA do not apply unless the hospital transfers a patient without stabilizing an emergency medical condition. *Baber v. Hospital Corp. of America*, 977 F.2d 872 (4th Cir. 1992).

II.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE EMTALA WAS NOT INTENDED TO CREATE A FEDERAL CAUSE OF ACTION FOR MEDICAL MALPRACTICE

The legislative history of EMTALA demonstrates that "Congress never intended to displace state malpractice law." *Brooks*, 996 F.2d at 714. This intent to supplement, but not supplant, state tort law is evident in EMTALA's limited preemption provision. *Brooks*, 996 F.2d at 715. "The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section." 42 U.S.C. § 1395dd(f).

EMTALA, which applies to all hospitals that participate in the federal Medicare program, imposes two (2) primary obligations on those hospitals. First, when an individual shows up for treatment at a hospital's emergency room, "the hospital must provide for an appropriate medical screening exam . . . to determine whether or not an emergency condition" exists. 42 U.S.C. § 1395dd(a). Second, if the screening examination indicates that an emergency medical condition does exist, the hospital ordinarily must "stabilize the medical condition" before transferring or

discharging the patient. 42 U.S.C. § 1395dd(b). A hospital can only transfer patients who are not stabilized if a physician certifies that the medical benefits reasonably expected from the provision of medical service at another facility outweigh the increased risks to the individual from effecting the transfer. 42 U.S.C. § 1395dd(c).

Every court of appeals that has considered the question has unanimously rejected the notion that EMTALA creates a federal cause of action for medical malpractice. *See Gatewood*, 933 F.2d 1037 (D.C. Cir. 1991) ("[we] cannot agree that [EMTALA] creates a sweeping federal cause of action with respect to what are traditional state-based claims of negligence or malpractice"); *Correa v. Hospital San Francisco*, 69 F.3d 1184, 1192 (1st Cir. 1995), *cert. denied*, 517 U.S. 1136 (1996) ("EMTALA does not create a cause of action for medical malpractice"); *Vickers*, 78 F.3d 138, 142 (4th Cir. 1996) ("the other circuit courts are universally in accord on the need to distinguish EMTALA claims from the standard claims of negligence and misdiagnosis"); *Marshall*, 134 F.3d 319, 322 (5th Cir. 1998) ("we agree with the other circuits which have interpreted EMTALA that the statute was not intended to be used as a federal malpractice statute"); *Cleland v. Bronson Healthcare Corp, Inc.*, 917 F.2d 266, 272 (6th Cir. 1990) (the language of EMTALA "precludes resort to a malpractice or other objective standard of care"); *Summers*, 91 F.3d 1132, 1137 (8th Cir. 1996) ("[E]very court that has considered EMTALA has disclaimed any notion that it creates a general federal cause of action for medical malpractice in emergency rooms"); *Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1258 (9th Cir. 1995) ("the statutory language of the EMTALA clearly declines to impose on a hospital a national standard of care in screening patients"); *Repp v. Anadarko Mun. Hosp.*, 43 F.3d 519, 522

(10th Cir. 1994) ("[W]e believe that the language of § 1395dd(a) precludes the adoption of a standard tantamount to a federal malpractice statute"); *Holcomb v. Monahan*, 30 F.3d 116, 117 (11th Cir. 1994) ("§ 1395dd(a) is not designed to redress a negligent diagnosis by the hospital; no federal malpractice claims are created").

The complaint, on its face, pleads a state law medical malpractice claim, not an EMTALA claim. The factual assertions contained in the complaint allege that Ms. Taylor was misdiagnosed as suffering from pneumonia rather than congestive heart failure. Petition for Writ of Certiorari A26. The complaint alleges that she suffered a stroke due to improper treatment, abuse, mismanagement and misdiagnosis. Petition for Writ of Certiorari A26. The complaint alleges that the hospital negligently delayed transferring Ms. Taylor to another health care facility. Petition for Writ of Certiorari A27. These allegations constitute a state based medical malpractice claim, not an EMTALA claim.

CONCLUSION

Just as the complaint sought to improperly transform a traditional medical malpractice cause of action into an EMTALA claim because Petitioner's case was barred under state law by the applicable statute of limitations, Petitioner's Petition for Writ of Certiorari tortures the facts of this case in an effort to expand the holding on this Court in *Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249 (1999).

Failure to plead an improper motive has nothing to do with this case. The complaint fails to state an EMTALA claim no matter how liberally it is construed. The complaint alleges

that the hospital misdiagnosed Ms. Taylor's condition. This allegation does not state an EMTALA claim. The complaint alleges that the hospital negligently caused Ms. Taylor to suffer a stroke while she was a patient in the hospital. This allegation does not state a valid EMTALA claim. The complaint alleges that the hospital failed to transfer Ms. Taylor to another health care facility in a timely fashion. This allegation does not state a valid EMTALA claim.

The EMTALA claim seems to have been added as the final count of the complaint almost as an afterthought. It is a blatant effort to get around the state statute of limitations which bars a traditional medical malpractice case as being untimely filed. The District Court and the Court of Appeals recognized the case for what it was and properly dismissed the complaint because it failed to properly state an EMTALA claim. Somehow, as the case has wound its way through the federal appellate system, it has transformed itself into a case claiming to involve substantial legal questions which require the attention of the highest court in the land. The case is simple and does not involve issues worthy of the attention of this Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

D. C. OFFUTT, JR.
Counsel of Record
OFFUTT, FISHER & NORD
Attorneys for Respondents
949 Third Avenue
Suite 300
P.O. Box 2868
Huntington, WV 25728-2868
(304) 529-2868

Supreme Court, U.S.
FILED
DEC 8 1999
CLERK

(3)

No. 99-602

IN THE

Supreme Court of the United States

GLEN TAYLOR, Executor of the
Estate of VERA TAYLOR,

Petitioner,

v.

PAUL B. HALL REGIONAL MEDICAL CENTER, d/b/a
PAINTSVILLE HOSPITAL CO. and
HEALTH MANAGEMENT ASSOCIATES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

D. C. OFFUTT, JR.
Counsel of Record
OFFUTT, FISHER & NORD
Attorneys for Respondents
949 Third Avenue
Suite 300
P.O. Box 2868
Huntington, WV 25728-2868
(304) 529-2868

156554

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

2 cpp

QUESTIONS PRESENTED

1. Whether a hospital can be held liable to a patient for an alleged violation of the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, when the hospital screened the patient, admitted her to the hospital, treated her medical condition and stabilized her before transfer?

2. Whether the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, creates a federal cause of action for medical malpractice and is a substitute for state law medical malpractice claims?

STATEMENT PURSUANT TO RULE 29.6

Respondent, Health Management Associates, Inc., is the parent company of Paul B. Hall Regional Medical Center. No publicly held company owns 10% or more of the stock of either Respondent.

TABLE OF CONTENTS

	Page
Questions Presented	i
Statement Pursuant to Rule 29.6	ii
Table of Contents	iii
Table of Cited Authorities	iv
Table of Appendices	vii
Statement of Jurisdiction	1
Statement of the Case	1
Reasons for Denying the Writ	7
I. Certiorari Should Not Be Granted Because The Complaint Fails To State An EMTALA Claim.	7
II. The Petition For Writ of Certiorari Should Be Denied Because EMTALA Was Not Intended To Create a Federal Cause of Action for Medical Malpractice	11
Conclusion	13

TABLE OF CITED AUTHORITIES

Page

Cases:

Baber v. Hospital Corp. of America, 977 F.2d 872 (4th Cir. 1992) 11

Brooks v. Maryland Gen. Hosp. Inc., 996 F.2d 708 (4th Cir. 1993) 10, 11

Bryan v. University of Virginia Medical Center, 95 F.3d 349 (4th Cir. 1996) 9

Cleland v. Bronson Healthcare Corp, Inc., 917 F.2d 266 (6th Cir. 1990) 12

Conner v. George W. Whitesides Co., 834 S.W.2d 632 (Ky. 1992) 8

Correa v. Hospital San Francisco, 69 F.3d 1184 (1st Cir. 1995), *cert. denied*, 517 U.S. 1136 (1996) 12

Eberhardt v. City of Los Angeles, 62 F.3d 1253 (9th Cir. 1995) 12

Gatewood v. Washington Healthcare Corp., 933 F.2d 1037 (D.C. Cir. 1991) 10, 12

Hardy v. New York City Health & Hospitals Corp., 164 F.3d 789 (2nd Cir. 1999) 10

Cited Authorities

	Page
Holcomb v. Monahan, 30 F.3d 116 (11th Cir. 1994)	13
Marshall v. East Carroll Parish Hospital, 134 F.3d 319 (5th Cir. 1998)	9, 10, 12
Papasan v. Allain, 478 U.S. 265 (1986)	7
Repp v. Anadarko Mun. Hosp., 43 F.3d 519 (10th Cir. 1994)	12, 13
Roberts v. Galen of Virginia, Inc., 525 U.S. 249 (1999)	13
Scheid v. Fanny Farmer Candy Shops, Inc., 59 F.2d 434 (6th Cir. 1988)	7
Southeastern Ky. Baptist Hosp. v. Gaylor, 756 S.W.2d 467 (Ky. 1988)	8
Summers v. Baptist Medical Center Arkadelphia, 91 F.3d 1132 (8th Cir. 1996)	9, 12
Vickers v. Nash General Hospital, Inc., 78 F.3d 139 (4th Cir. 1996)	9, 12
Statutes:	
28 U.S.C. § 1254(1)	1
42 U.S.C. § 1395dd	i, 7

Cited Authorities

	Page
42 U.S.C. § 1395dd(a)	4, 11
42 U.S.C. § 1395dd(b)	4, 12
42 U.S.C. § 1395dd(c)	4, 12
42 U.S.C. § 1395dd(f)	11
KY. REV. STAT. ANN. § 413.140(1)(e) (Baldwin 1991)	7
KY. REV. STAT. ANN. § 413.180(1) (Baldwin 1991)	8
United States Constitution:	
Fourteenth Amendment	3
Rules:	
Fed. R. Civ. P. 8(a)	5, 7, 9
Fed. R. Civ. P. 8(a)(2)	7
Fed. R. Civ. P. 12	5
Fed. R. Civ. P. 12(b)(6)	3, 6
Fed. R. Civ. P. 56	5, 6
United States Supreme Court Rule 10	1

TABLE OF APPENDICES

Page

Appendix — Paul B. Hall Regional Medical Center
Discharge Summary A1

STATEMENT OF JURISDICTION

Jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1). The considerations governing this Court's jurisdiction on a writ of certiorari are enumerated in Rule 10 of the Rules of the Supreme Court of the United States. That rule provides, in relevant part, "A petition for a writ of certiorari will only be granted for compelling reasons." Respondents submit that this is a case of inadequate pleading in a Complaint filed in federal court by petitioner to circumvent Kentucky state law which would bar petitioner's claim under the relevant statute of limitations and it must be denied.

STATEMENT OF THE CASE

Paul B. Hall Regional Medical Center is a small hospital located in Paintsville, Kentucky, which offers primary medical care to the residents of rural Eastern Kentucky. The hospital has an emergency department and is licensed by the State of Kentucky for forty (40) inpatient beds. Petitioner's decedent, Vera Taylor, came to the emergency department at Paul B. Hall Regional Medical Center on August 22, 1995, at 10:56 p.m. complaining of shortness of breath. Ms. Taylor, who was eighty-one (81) years old, was evaluated by a physician in the hospital's emergency department.[1]

---

1. The discharge summary contained in Ms. Taylor's medical records maintained by Paul B. Hall Regional Medical Center which was attached as an exhibit to Respondents' Motion to Dismiss and specifically referred to by the District Court in its opinion dismissing Petitioner's claim, is reproduced in the Appendix hereto at pp. A1-A3.

In the emergency room, Ms. Taylor had a chest x-ray and an electrocardiogram. (A1). Her blood count was tested and she was administered fluids by I.V. to help with her hydration. (A1). She was administered oxygen, antibiotics and breathing medications. (A1). After conducting an examination and testing Ms. Taylor, the emergency room physician diagnosed her as suffering from acute congestive heart failure as well as acute respiratory distress and admitted her to the hospital in the early morning hours of August 23, 1995. (A1).

Ms. Taylor was treated in the hospital for congestive heart failure and respiratory distress. (A1). She responded to the prescribed treatment and her overall condition greatly improved. (A2). On August 24, 1995, at approximately 4:30 p.m., while still a patient in the hospital, Ms. Taylor became suddenly unresponsive and demonstrated weakness in her lower extremities and left arm. (A2). A CT scan was performed which showed a possible intracranial hemorrhage (stroke). (A2). Respondents contacted King's Daughters' Hospital, a larger medical facility located in nearby Ashland, Kentucky, where Ms. Taylor could obtain an evaluation and treatment by a neurosurgeon, services which were not available at Paul B. Hall Regional Medical Center. She was transferred by ambulance to King's Daughters' Hospital on the evening of August 24, 1995. (A2).

Ms. Taylor died as a patient at King's Daughters' Hospital four (4) days later, on August 29, 1995. Petition for Writ of Certiorari 3. Glen Taylor, her husband, was appointed executor of Ms. Taylor's estate on September 13, 1995. He filed this lawsuit against Respondents in the United States District Court for the Eastern District of Kentucky, on August 22, 1997, alleging seven (7) separate causes of action against Respondents.

Count I of the complaint alleged that Respondents deprived Ms. Taylor her of her right to life as provided in the United States Constitution by improper treatment, abuse, mismanagement and misdiagnosis. Count II of the complaint alleged that Ms. Taylor was denied her right to liberty and right to adequate medical treatment as established in the United States Constitution by having arterial blood gas tests forced upon her against her will. Count III of the complaint alleged that Ms. Taylor was denied her right to liberty and adequate medical treatment as established in the Fourteenth Amendment of the United States Constitution by not being informed of her right to refuse or accept certain medical treatment. Count IV of the complaint alleged that Respondents intentionally failed to provide ambulance transportation for Ms. Taylor, thus depriving her of her right to liberty, safety and freedom of movement as guaranteed by the United States Constitution. Count V of the complaint alleged that Respondents deprived Ms. Taylor of her constitutional right to adequate medical care and treatment in violation of the United States Constitution by failing to provide her with the benefits and protection of hospital policies and protocols. Count VI of the complaint alleged that Respondents discriminated against Ms. Taylor due to her age by forcing her to have invasive procedures performed upon her against her will. Count VII of the complaint alleged unspecified violations of the Emergency Medical Treatment and Active Labor Act (EMTALA). Petition for Writ of Certiorari A24-A32.

The Respondents moved the District Court to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). The District Court granted the Respondents' motion to dismiss and entered judgment for Respondents on all of the counts contained in the complaint. In dismissing the EMTALA

claim, the Court ruled that Petitioner failed to set out any facts in the complaint which made out a sufficiently pled claim for failure to properly screen, stabilize or transfer Ms. Taylor. Petition for Writ of Certiorari A21.

The District Court recognized the fundamental flaw in the Petitioner's effort to state an EMTALA claim. This is not a case where the hospital refused to provide an appropriate medical screening examination in violation of 42 U.S.C. § 1395dd(a). The hospital examined Ms. Taylor and admitted her as a patient. This is not a case where the hospital failed to provide necessary stabilizing treatment pursuant to 42 U.S.C. § 1395dd(b). The hospital treated her medical conditions after she was admitted. This is not a case where the hospital transferred a patient without properly stabilizing the patient's medical condition in violation of 42 U.S.C. § 1395dd(c). Although the hospital transferred Ms. Taylor to another hospital after she suffered a stroke, the complaint does not allege that she was improperly transferred without being stabilized. The complaint alleges that there was an improper delay in the transfer. Petition for Writ of Certiorari A27. All of the allegations contained in the sparsely worded complaint sound in negligence. The District Court properly held that an EMTALA claim "is not a substitute for state law malpractice actions, and was not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence." Petition for Writ of Certiorari A21.

The District Court went further and examined whether the complaint was otherwise sufficient to plead an EMTALA claim. In this regard, the District Court examined the hospital discharge summary which was attached to Respondents' motion to dismiss as an exhibit. In doing so, the District

Court construed Respondents' motion as a motion for summary judgment under Fed. R. Civ. P. 56, as permitted by Rule 12(b).

In reviewing the discharge summary, the District Court pointed out several factual inaccuracies in the complaint. The Court noted that Petitioner's assertion that the discharging doctor stated that coronary arrest (CA) needed to be ruled out was contradicted by the discharge summary which stated that intercranial hemorrhage needs to be ruled out. Petition for Writ of Certiorari A20. Second, the Court noted that Petitioner's assertion that Ms. Taylor did not receive proper screening because congestive heart failure was not ruled out was contradicted by the discharge summary which showed that her congestive heart failure was treated and improved. Petition for Writ of Certiorari A20. Lastly, the District Court pointed out that Petitioner's contention that Ms. Taylor was not stabilized at the time of her transfer, based on the fact that she was transferred five (5) hours after the attending physician determined that she should be transferred, did not support a claim that she was not stable at the time of the transfer. Petition for Writ of Certiorari A20-21.

Petitioner only appealed the District Court's dismissal of the EMTALA claim. Therefore, the only issue before the Sixth Circuit Court of Appeals was whether the District Court erred in dismissing Taylor's EMTALA claim. Petition for Writ of Certiorari A2. The Sixth Circuit agreed that Petitioner failed to properly plead an EMTALA claim in the complaint. Petition for Writ of Certiorari A4. The Sixth Circuit held that "bare assertions of legal conclusions" are insufficient to satisfy Fed. R. Civ. P. 8(a), which requires every complaint to include "either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." Petition for Writ of Certiorari A5.

After upholding the District Court's dismissal of the EMTALA claim pursuant to Rule 12(b)(6), the Circuit Court also examined the District Court's alternative ruling that, even if Respondent had properly pled his complaint, the EMTALA claim would still fail because the record demonstrated that Respondents did not improperly screen, stabilize or transfer Ms. Taylor. Petition for Writ of Certiorari A4. The Sixth Circuit noted that the District Court went outside the pleadings by examining Ms. Taylor's hospital discharge summary and, to that limited extent, construed Respondent's Motion as one for summary judgment under Fed. R. Civ. P. 56, instead of one for dismissal under Rule 12(b)(6). Reviewing the decision, *de novo,* the Court of Appeals found that the District Court's judgment should be affirmed because no genuine issue of material dispute exists as to the material facts cited by the District Court, and those facts demonstrate that Respondents were entitled to judgment as a matter of law. Petition for Writ of Certiorari A4. The Court of Appeals also found that Petitioner's complaint pled a medical malpractice action, not an EMTALA claim. The Court noted that an EMTALA claim is not a substitute for a state law medical malpractice action and EMTALA was not intended to guarantee proper diagnosis or provide a federal remedy for a medical misdiagnosis or other medical negligence. Petition for Writ of Certiorari A6.

REASONS FOR DENYING THE WRIT

I.

CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE COMPLAINT FAILS TO STATE AN EMTALA CLAIM.

As pointed out in the opinions of the District Court and the Sixth Circuit Court of Appeals, Petitioner failed to properly plead a valid cause of action against Respondents in this matter as required by Rule 8(a) of the Federal Rules of Civil Procedure. Although each court commented about the requirements of 42 U.S.C. § 1395dd, they did so only after specifically holding that Count VII of the plaintiffs' complaint, which alleged a violation of EMTALA, was inadequate to plead a valid cause of action to satisfy Fed. R. Civ. P. 8(a). Fed. R. Civ. P. 8(a) requires every complaint to include a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To satisfy the notice pleading requirements, a complaint must contain more than bare assertions of legal conclusions. Such conclusory allegations do not sufficiently plead a cause of action. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Scheid v. Fanny Farmer Candy Shops, Inc.*, 59 F.2d 434, 436 (6th Cir. 1988).

Petitioner's complaint contains a hodgepodge of vaguely stated federal constitutional law claims. At the time the complaint was filed in federal court, Petitioner was beyond the statute of limitations to bring an action for medical malpractice in Kentucky. Kentucky has a one (1) year statute of limitations for medical malpractice claims. KY. REV. STAT. ANN. § 413.140(1)(e) (Baldwin 1991). In Kentucky, if a

personal representative is appointed within one (1) year of the date of death, he is then granted one (1) year from the date of his appointment to file suit. If no suit is filed within that time, the action for wrongful death dies. KY. REV. STAT. ANN. § 413.180(1) (Baldwin 1991). *Conner v. George W. Whitesides Co.*, 834 S.W.2d 632 (Ky. 1992), *Southeastern Ky. Baptist Hosp. v. Gaylor*, 756 S.W.2d 467 (Ky. 1988). Ms. Taylor died on August 29, 1995. Glen Taylor was appointed executor of her estate on September 13, 1995. Consequently, under Kentucky law, Mr. Taylor had to file his suit by September 13, 1996. He filed this lawsuit in federal court on August 22, 1997, eleven (11) months too late to bring a claim of malpractice based on Kentucky law.

In his complaint, Petitioner plead his EMTALA claim as follows:

COUNT VII

1. That Plaintiff reiterates and realleges all allegations previously made.

2. That the Defendant is governed under the regulations and guidelines of the Emergency Medical Treatment and Active Labor Act (EMTALA).

3. That the Defendant violated the provisions of this act.

4. That due to the Defendant's violation of the above mentioned act, the Plaintiff suffered harm.

5. That under the act, the Plaintiff is able to recover damages in accordance with state personal injury guidelines.

Petition for Writ of Certiorari A31.

Even if this pleading is sufficient under Rule 8(a) of the Federal Rules of Civil Procedure, the District Court specifically found the plaintiff's complaint failed to state an EMTALA claim. The hospital discharge summary shows clearly that Ms. Taylor was provided emergency care, she was administered screening examinations in the emergency room, she was hospitalized and her condition was stable before transfer, all as required by EMTALA. EMTALA imposes a limited duty on hospitals with emergency rooms to provide emergency care to all who come there. The purpose of the Emergency Medical Treatment and Active Labor Act was to address the "dumping" of uninsured, underinsured, or indigent patients into other hospitals or hospitals who did not want to treat them. *Summers v. Baptist Medical Center Arkadelphia*, 91 F.3d 1132 (8th Cir. 1996). Its core purpose is to deal with the problem of patients being turned away from emergency rooms for non-medical reasons. *Bryan v. University of Virginia Medical Center*, 95 F.3d 349 (4th Cir. 1996). It is not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence. *Vickers v. Nash General Hospital, Inc.*, 78 F.3d 139 (4th Cir. 1996).

Even if a hospital physician who performs an examination makes a misdiagnosis that could subject him and the hospital to liability in a medical malpractice action under state law, the hospital is not liable under EMTALA. *Marshall v. East Carroll Parish Hospital*, 134 F.3d 319

(5th Cir. 1998). EMTALA was enacted to fill a void in traditional state tort law by imposing on hospitals a legal duty which did not exist under common law, to provide emergency care to all. *See Brooks v. Maryland Gen. Hosp. Inc.*, 996 F.2d 708, 714-15 (4th Cir. 1993); *Hardy v. New York City Health & Hospitals Corp.*, 164 F.3d 789 (2nd Cir. 1999). EMTALA creates a new cause of action, generally unavailable under state tort law, for what amounts to a failure to treat. *Gatewood v. Washington Healthcare Corp.*, 933 F.2d 1037, 1041 (D.C. Cir. 1991).

As Ms. Taylor's discharge summary clearly shows, she was seen and evaluated in the emergency room at Paul B. Hall Regional Medical Center. (A1-A3). After she was admitted as a patient to the hospital and received medical treatment, her condition stabilized and even improved. (A2). She suffered a stroke two (2) days after her admission to the hospital. (A2). Paul B. Hall Regional Medical Center did not have a neurosurgeon on staff to evaluate or treat Ms. Taylor for this new medical condition which came about two (2) days after she presented to the hospital's emergency room. She was stabilized and transferred to a larger hospital where she died five (5) days later. There is no allegation in the complaint that Ms. Taylor was not stable at the time of the transfer or that she suffered any deterioration in her condition or resultant harm, as a result of the transfer. In fact, paragraphs 16 through 22 of the complaint allege that there was a delay in transfer, not that Ms. Taylor was transported improperly. Petition for Writ of Certiorari A27-A28. Petitioner's complaint did not allege that Ms. Taylor was not stabilized before her transfer to King's Daughters' Hospital. It alleges that her transfer was not made in a timely fashion once her treating physician determined that she should be transferred. A negligent delay in transfer may

constitute negligence or malpractice under state law, but cannot support an Emergency Medical Treatment and Active Labor Act (EMTALA) claim for an inappropriate transfer. The transfer requirements of EMTALA do not apply unless the hospital transfers a patient without stabilizing an emergency medical condition. *Baber v. Hospital Corp. of America*, 977 F.2d 872 (4th Cir. 1992).

II.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE EMTALA WAS NOT INTENDED TO CREATE A FEDERAL CAUSE OF ACTION FOR MEDICAL MALPRACTICE

The legislative history of EMTALA demonstrates that "Congress never intended to displace state malpractice law." *Brooks*, 996 F.2d at 714. This intent to supplement, but not supplant, state tort law is evident in EMTALA's limited preemption provision. *Brooks*, 996 F.2d at 715. "The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section." 42 U.S.C. § 1395dd(f).

EMTALA, which applies to all hospitals that participate in the federal Medicare program, imposes two (2) primary obligations on those hospitals. First, when an individual shows up for treatment at a hospital's emergency room, "the hospital must provide for an appropriate medical screening exam . . . to determine whether or not an emergency condition" exists. 42 U.S.C. § 1395dd(a). Second, if the screening examination indicates that an emergency medical condition does exist, the hospital ordinarily must "stabilize the medical condition" before transferring or

discharging the patient. 42 U.S.C. § 1395dd(b). A hospital can only transfer patients who are not stabilized if a physician certifies that the medical benefits reasonably expected from the provision of medical service at another facility outweigh the increased risks to the individual from effecting the transfer. 42 U.S.C. § 1395dd(c).

Every court of appeals that has considered the question has unanimously rejected the notion that EMTALA creates a federal cause of action for medical malpractice. *See Gatewood*, 933 F.2d 1037 (D.C. Cir. 1991) ("[we] cannot agree that [EMTALA] creates a sweeping federal cause of action with respect to what are traditional state-based claims of negligence or malpractice"); *Correa v. Hospital San Francisco*, 69 F.3d 1184, 1192 (1st Cir. 1995), *cert. denied*, 517 U.S. 1136 (1996) ("EMTALA does not create a cause of action for medical malpractice"); *Vickers*, 78 F.3d 138, 142 (4th Cir. 1996) ("the other circuit courts are universally in accord on the need to distinguish EMTALA claims from the standard claims of negligence and misdiagnosis"); *Marshall*, 134 F.3d 319, 322 (5th Cir. 1998) ("we agree with the other circuits which have interpreted EMTALA that the statute was not intended to be used as a federal malpractice statute"); *Cleland v. Bronson Healthcare Corp, Inc.*, 917 F.2d 266, 272 (6th Cir. 1990) (the language of EMTALA "precludes resort to a malpractice or other objective standard of care"); *Summers*, 91 F.3d 1132, 1137 (8th Cir. 1996) ("[E]very court that has considered EMTALA has disclaimed any notion that it creates a general federal cause of action for medical malpractice in emergency rooms"); *Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1258 (9th Cir. 1995) ("the statutory language of the EMTALA clearly declines to impose on a hospital a national standard of care in screening patients"); *Repp v. Anadarko Mun. Hosp.*, 43 F.3d 519, 522

(10th Cir. 1994) ("[W]e believe that the language of § 1395dd(a) precludes the adoption of a standard tantamount to a federal malpractice statute"); *Holcomb v. Monahan*, 30 F.3d 116, 117 (11th Cir. 1994) ("§ 1395dd(a) is not designed to redress a negligent diagnosis by the hospital; no federal malpractice claims are created").

The complaint, on its face, pleads a state law medical malpractice claim, not an EMTALA claim. The factual assertions contained in the complaint allege that Ms. Taylor was misdiagnosed as suffering from pneumonia rather than congestive heart failure. Petition for Writ of Certiorari A26. The complaint alleges that she suffered a stroke due to improper treatment, abuse, mismanagement and misdiagnosis. Petition for Writ of Certiorari A26. The complaint alleges that the hospital negligently delayed transferring Ms. Taylor to another health care facility. Petition for Writ of Certiorari A27. These allegations constitute a state based medical malpractice claim, not an EMTALA claim.

CONCLUSION

Just as the complaint sought to improperly transform a traditional medical malpractice cause of action into an EMTALA claim because Petitioner's case was barred under state law by the applicable statute of limitations, Petitioner's Petition for Writ of Certiorari tortures the facts of this case in an effort to expand the holding on this Court in *Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249 (1999).

Failure to plead an improper motive has nothing to do with this case. The complaint fails to state an EMTALA claim no matter how liberally it is construed. The complaint alleges

that the hospital misdiagnosed Ms. Taylor's condition. This allegation does not state an EMTALA claim. The complaint alleges that the hospital negligently caused Ms. Taylor to suffer a stroke while she was a patient in the hospital. This allegation does not state a valid EMTALA claim. The complaint alleges that the hospital failed to transfer Ms. Taylor to another health care facility in a timely fashion. This allegation does not state a valid EMTALA claim.

The EMTALA claim seems to have been added as the final count of the complaint almost as an afterthought. It is a blatant effort to get around the state statute of limitations which bars a traditional medical malpractice case as being untimely filed. The District Court and the Court of Appeals recognized the case for what it was and properly dismissed the complaint because it failed to properly state an EMTALA claim. Somehow, as the case has wound its way through the federal appellate system, it has transformed itself into a case claiming to involve substantial legal questions which require the attention of the highest court in the land. The case is simple and does not involve issues worthy of the attention of this Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

D. C. OFFUTT, JR.
Counsel of Record
OFFUTT, FISHER & NORD
Attorneys for Respondents
949 Third Avenue
Suite 300
P.O. Box 2868
Huntington, WV 25728-2868
(304) 529-2868

APPENDIX

APPENDIX — PAUL B. HALL REGIONAL MEDICAL CENTER DISCHARGE SUMMARY

Medical Record #: 26093

PATIENT: VERA TAYLOR

PHYSICIAN: Bonifacio Aranas, M.D.

ADMISSION DATE: 8-22-95
DISCHARGE DATE: 8-24-95

Vera Taylor is an 81 year old white female who was admitted to the emergency room on 8/22/95 at 10:56 p.m. with a complaint of shortness of breath for one week which was tremendously worse a few hours before the patient was seen in E. R. She was diagnosed as having acute congestive heart failure and was transferred to the Unit the next day because of acute respiratory distress. Her x-ray at that time was reported as picture of congestive heart failure, cardiomegaly and pleural effusion. The patient was given 100% oxygen in a non-rebreather mask; she was given a total dose of Lasix, 120 mg in one hour and was started on Lanoxin, .25 mg PO, Capoten, 6.75 mg PO and Nitroglycerin 1/150 sublingually. The patient's condition, after about 2-3 hours, improved greatly and the oxygen was changed to Venti-mask, 50%, after that. Her blood gasses improved after 3-4 hours. The pH was 7.40; PC02 43 and P02 155. At this time, the patient's oxygen was changed to Vanti-mask, 50% from 100%, 15 liters per minute in a non-rebreather mask. Her respirations were not as rapid, it went down from 36 to about 24 per minute. Her BP was maintained at 110/60; pulse rate went down from 120 to 80-90 per minute. For the next 12 hours, she had urinary output of 2000 liters; her IV fluid

was restricted and intake was limited to 1,000 liters in 24 hours. Her blood sugar, when she had acute respiratory distress, was 570 and the patient was given 10 units of Regular Insulin. The next day her blood sugar went down to 270 mg per dl. Patient's overall condition was remarkably improved on 8/23/95. Her blood pressure was 120/60; temp. 98.8; RR 20 per minute; heart rate 85 per minute. She denies any chest pain and her cardiac enzymes were reported normal. Her electrolytes were also reported normal at that time. Her potassium was 5.6 without any potassium replacement. She still has some minimal crepitation at her lung bases. Her extremities showed no swelling or deformity.

The patient was eventually put on Venti-mask, 40%, on 8/24/95. Clear liquids were given and progressed as tolerated. However, at about 4:30 p.m., the patient just suddenly became unresponsive, according to the nurses' notes. She stopped responding to verbal stimulation and the nurse noted weakness of the right upper extremity. She was moving both lower extremities and her left arm. Her pupils reacted to light and accommodation. There was no myosis or mydriasis. CT scan was done at once and there was a question of patient having an intracranial hemorrhage. Her family physician in Ashland, Kentucky was contacted and he agrees for the patient to be transferred to Ashland under the care of Dr. Shields, who is a Neurosurgeon. The patient was then transferred that night to Ashland under ALS with a paramedic.

Appendix

FINAL DIAGNOSES:

1) CVA, rule out intracranial hemorrhage.
2) Congestive heart failure, improved.
3) Non-insulin dependent diabetes mellitus.
4) S/P hip fracture and left shoulder fracture.

/s/ Bonifacio Aranas, M.D.
Bonifacio Aranas, M.D. 8-28-95

TR/pgm 9-14-95